Department of Labour, Canada

COMBINES INVESTIGATION ACT

INVESTIGATION INTO

AN ALLEGED COMBINE

OF WHOLESALERS AND SHIPPERS OF

FRUITS AND VEGETABLES

IN WESTERN CANADA

Report of Commissioner

October 31, 1939

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
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Price, 25 cents.

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REPORT OF COMMISSIONER OF THE COMBINES INVESTIGATION ACT

OTTAWA, October 31, 1939.

Hon. NORMAN McLARTY,
Minister of Labour,
Ottawa.

SIR,—I have the honour to submit the following report of an investigation which has been made under the Combines Investigation Act into two alleged combines in the distribution of fruits and vegetables in Western Canada. Application for this investigation was made in October, 1938, under section eleven of the Act. Two combines were alleged to exist, one a combination of certain jobbers with head offices in Winnipeg, Manitoba, and certain shipping companies in the Okanagan Valley, British Columbia; the other a combination of three wholesale distributing organizations operating in the western provinces.

In connection with the first alleged combine it was stated that in 1936 Western Grocers Limited, of Winnipeg, Manitoba, through its wholly-owned subsidiary, Dominion Fruit Limited, secretly purchased a fifty per cent interest in the Lander Company Limited, of Vernon, British Columbia, a holding company which in turn controls several fruit and vegetable shipping companies and one fruit and vegetable selling agency in the Okanagan Valley. It was represented that such jobber control of shippers, who are the agents of the fruit growers, is certain to react, and has reacted in many ways, against the interests of the growers. The applicants declared that in their opinion this particular jobber-shipper relationship constituted an offence against the Combines Investigation Act as a combination or merger which had operated and was likely to operate against the interests of the public. This alleged combine is referred to in the present report as the alleged combine of jobbers and shippers. It is a combination not of competitors engaged in the same process of buying and selling but of concerns which operate at successive stages in the process of distribution.

The wholesale distributing concerns which were said to comprise the alleged jobbers' combine are: (1) Western Grocers Limited, with head offices in Winnipeg, which, with its subsidiary, Dominion Fruit Limited, operates thirty wholesale grocery and fruit houses in the three prairie provinces, and also has close connections with several hundred retail establishments, most of which are operated in Western Canada as Red and White Stores; (2) Consolidated Fruit Company Limited, which operates seventeen regular wholesale grocery and fruit establishments in the prairie provinces, and is a subsidiary of Burns and Company Limited, with head office in Calgary; and (3) Macdonalds Consolidated Limited, operating thirty wholesale grocery and fruit houses in the prairie provinces. The latter company is itself a wholly-owned subsidiary of a retail company, Safeway Stores Limited, whose head offices are in Vancouver. The Safeway company owns and operates approximately 230 retail stores in Western Canada. Another wholesale company, the Continental Fruit Company, established in Winnipeg in 1937, is a wholly-owned subsidiary of Macdonalds Consolidated Limited. Allegations were made to the effect that these three companies and their related or subsidiary companies controlled approximately 80 per cent of the wholesale fruit business of the prairie provinces, that they

had entered into agreements to regulate supplies, to fix and enhance prices, to eliminate the competition of certain independent fruit jobbers, and that through these various methods they had operated against the interests of producers, consumers and other distributors.

Hearings were held at several points in the Okanagan Valley and in five cities in the provinces of Alberta, Saskatchewan and Manitoba, in November and December, 1938, and in February and March, 1939. At these sessions, which occupied forty-three days, evidence was taken from representative growers, shippers, brokers and jobbers, as well as from the members of the British Columbia Fruit Board and other persons associated with the British Columbia fruit industry and the marketing of fruit and vegetables in the prairie provinces. Argument of counsel representing the commission and the members of the alleged combines was presented in written form and was received in Ottawa in May and June, 1939.

Appreciative acknowledgment is made here of the able assistance given by H. I. Bird, barrister, of Vancouver, who acted as counsel throughout the investigation. Thanks are due also to the members and staff of the British Columbia Fruit Board, to M. S. Middleton, District Horticulturist, of Vernon, British Columbia, and to all those associated with the industry in the Okanagan Valley and with the trade in the prairie provinces who were of assistance in the inquiry.

In the course of the inquiry statistical and other information regarding the production and distribution of Okanagan Valley products was assembled. Much of this economic material is embodied in the next sections of this report and in the appendices.

I. THE FRUIT INDUSTRY IN BRITISH COLUMBIA

1. Canadian Production, Consumption and Exports

The relative importance of British Columbia in the fruit-growing industry is indicated by the fact that in 1937 it produced forty per cent of all fruit commercially grown in Canada. Ontario produced slightly under thirty per cent and Nova Scotia slightly over twenty per cent of the Canadian crop, which was valued at $17,892,000. The production of these three principal fruit-growing areas is shown in the following table:—

TABLE 1.—VALUE OF FRUITS PRODUCED IN CANADA, BY PROVINCES, 1926-1937*

(in thousands of dollars)

Year	Nova Scotia	Ontario	British Columbia	Other Provinces	Canada
	$	$	$	$	$
1926	2,503	4,254	7,281	949	14,987
1927	2,866	6,437	7,023	963	17,289
1928	3,217	7,519	7,885	1,016	19,637
1929	2,660	8,541	6,693	1,330	19,224
1930	2,898	6,493	7,550	1,177	18,118
1931	2,957	5,894	4,774	1,117	14,742
1932	2,012	3,958	5,075	1,363	12,408
1933	3,776	5,353	5,808	1,619	16,556
1934	3,212	4,967	6,524	1,417	16,120
1935	4,405	5,440	6,502	1,957	18,304
1936	3,113	4,721	5,913	1,567	15,314
1937	3,600	4,892	7,460	1,940	17,892

* Dominion Bureau of Statistics, *Fruit Statistics of Canada.*

Apples represent the most important fruit crop in Canada. Of the total Canadian production of apples in 1938 British Columbia produced 39 per cent, Ontario 16 per cent, and Nova Scotia 42 per cent. In British Columbia apples are sold and recorded in boxes of approximately 42 pounds; in Ontario sales are made in bushel and half bushel baskets, but are usually recorded in barrels, which contain 3 bushels; in Nova Scotia sales are made and recorded in barrels of approximately 135 pounds. In the table below production in each province is shown in thousands of boxes.

TABLE 2.—QUANTITY OF APPLES PRODUCED IN CANADA, BY PROVINCES, 1926-1938*

(in thousands of boxes)

Year	Nova Scotia	Ontario	British Columbia	Other Provinces	Canada
1926	2,782	1,721	4,112	425	9,040
1927	2,775	2,021	3,409	398	8,603
1928	3,268	1,684	4,608	385	9,945
1929	5,214	2,427	3,484	666	11,791
1930	3,517	1,911	4,488	498	10,414
1931	4,282	2,928	3,544	723	11,477
1932	3,164	2,756	5,190	899	12,009
1933	7,314	3,206	4,815	1,085	16,420
1934	5,400	1,821	5,404	438	13,063
1935	5,400	2,181	5,145	774	13,500
1936	5,250	2,111	4,625	360	12,346
1937	6,458	2,236	5,798	680	15,172
1938	6,572	2,536	6,049	510	15,367

* Dominion Bureau of Statistics, *Fruit Statistics of Canada.*

With production increasing from nine million boxes in 1926 to over fifteen million in 1938, the apple growing industry in Canada has supplemented its domestic market with an increased export trade. The United Kingdom takes about 90 per cent of these exports. Domestic consumption after the peak crop year of 1928 declined slightly, and not until 1937 did per capita consumption return to the 1928 level as appears from the following table:—

TABLE 3.—PRODUCTION AND CONSUMPTION OF APPLES, AND PER CAPITA CONSUMPTION, CANADA, 1928-1937*

(in thousands of boxes)

Year—April 1 to Mar. 31	Estimated Commercial Production	Total Exports	Canadian Consumption†		
			Total Consumption	% of Total Production	Per Capita Consumption
				%	lbs.
1928–29	9,946	3,243	7,284	73·2	34·0
1929–30	11,791	5,646	6,618	56·2	30·4
1930–31	10,414	4,995	5,838	56·6	26·4
1931–32	11,477	4,977	6,858	59·8	29·7
1932–33	12,009	5,340	6,894	57·4	29·5
1933–34	16,420	10,428	6,105	37·2	25·7
1934–35	13,063	6,180	6,948	53·2	28·9
1935–36	13,500	6,864	6,798	50·0	27·9
1936–37	12,346	4,518	7,992	64·0	32·6
1937–38	15,172	6,642	9,165	60·4	36·8

* *The Apple Crop Production and Distribution, 1937–38* (Department of Agriculture, Marketing Service, Fruit and Vegetable Division).

† Includes imports, which ranged from 383,860 boxes in 1928–29 to 66,411 boxes in 1934–35.

While the Canadian fruit industry grew rapidly a comparable development was taking place in the western United States. Stimulated by the immense market east of the Mississippi Valley, the Pacific Coast fruit growing districts broadened their production until they too were faced with marketing difficulties. This led to the export of that portion which could find no domestic market at a given price, and export sales were made frequently at prices less than prevailing domestic or world prices. When such sales were made to fruit producing countries the price structure of the importing country consequently was affected. Under these circumstances it was probably inevitable that demand should arise from Canadian fruit producers for customs tariff protection for their industry. Since 1906 a graded tariff on imported apples has been imposed and seasonal dumping duties have been applied to off-season imports. A table showing the customs duties on apples since 1867 is included in Appendix I. It has been suggested that tariff protection of the fruit industry has made the selling price of Canadian apples, particularly in the prairie markets, frequently higher than the world price, and that the chief marketing problem has been to prevent a flooding of the domestic market by Canadian producers who are encouraged by the higher price level.[1]

[1] Ormsby, *Fruit Marketing in the Okanagan Valley of British Columbia* (1935), 9 Agricultural History 80, at p. 86.

2. Development of Fruit Growing in the Okanagan Valley

Although several other districts have begun to grow apples and small fruits on a considerable scale the Okanagan Valley is the most important fruit growing area in British Columbia and dominates the industry.[2] Large scale vegetable and potato production has been developed in other parts of the province. The Saanich and Duncan districts on Vancouver Island, the main line and the lower Fraser Valley, and Howe Sound and Sechelt on the mainland coast have become important commercial producing areas.

The Okanagan Valley is the term employed generally to describe the land due north of Armstrong toward Sicamous on the Canadian Pacific Railway main line and southward to the region west and south of Penticton watered by the Similkameen River. It is approximately 160 miles long and 80 miles wide, and covers an area of about 13,000 square miles. The Okanagan Valley became a fruit producing centre only after a process of experimentation by which it narrowed down the range of its economic activities. Fur trading, gold mining, cattle ranching and wheat growing all contributed to the Valley's growth. Fruit growing appeared about 1860 when apple trees were planted by Oblate priests near the "Old Mission,"[3] but the commercial development did not come until much later. In 1892 the acquisition by Lord Aberdeen of large tracts near Kelowna and Vernon and the introduction of multi-acre tree plantings pointed the way to fruit cultivation as an industry. Large irrigation systems were installed throughout the district to substitute for the lack of precipitation which makes the Okanagan a temperate but perpetual dry-belt. By 1906 large tracts in the Valley were under cultivation and in the next eight years there was a very heavy increase in the number of plantings and of new settlers. The Okanagan Valley land rush eased after 1914, when the population and settlements began to take on their present size and character. In these boom years a good deal of poor land, fit only for grazing purposes, had been planted, and many disappointed settlers were compelled to find other locations or to cultivate other products.

By 1920 the Okanagan Valley, together with other fruit growing areas in British Columbia, had reached a mature stage of commercial development, but the opening of new fruit growing districts and changes in apple varieties contributed to a continuous expansion of the industry. From approximately eight cars sold in 1896, the industry in the Okanagan has developed until today it grows and ships over 7,000 cars of apples annually, as well as a very large quantity of pears and soft and small fruits. Table 4 shows the importance of the Okanagan Valley in the British Columbia industry, while Table 5 shows the volume of the principal fruits grown in the Valley.

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[2] Creston, Nelson, Grand Forks in the Kootenay Lakes region, the Bella Coola region on the north coast, the lower Fraser Valley, and the Duncan and Saanich area on Vancouver Island are all areas of fruit culture. The term "Okanagan Valley" is used in this report to refer not only to the Okanagan Valley itself but to the area (Okanagan Valley, Creston, Nelson and Grand Forks) under the administrative control of the B. C. Fruit Board. Areas in British Columbia not subject to Fruit Board control produce a relatively slight share of the total British Columbia fruit production.

[3] From historical material supplied by M. S. Middleton, part of Exhibit 133, Old Mission is believed to be a point 6 miles north-east of Kelowna, B.C.

TABLE 4.—PRODUCTION OF APPLES AND PEARS IN BRITISH COLUMBIA, AND IN THE OKANAGAN VALLEY, 1926–1937*

(in thousands of boxes)

Year	Apples		Pears	
	Okanagan Valley	All British Columbia	Okanagan Valley	All British Columbia
1926	3,569	4,112	145	181
1927	3,038	3,409	107	128
1928	4,146	4,608	175	207
1929	3,081	3,484	129	163
1930	4,147	4,488	143	174
1931	3,145	3,544	160	187
1932	4,774	5,190	132	167
1933	4,338	4,815	232	220
1934	4,944	5,404	228	279
1935	4,581	5,145	232	269
1936	4,257	4,625	234	267
1937	5,397	5,798	275	302

* Figures for Okanagan Valley supplied by M. S. Middleton, District Horticulturist, Vernon, B.C. (part of Exhibit 133); figures for all British Columbia from *Fruit Statistics of Canada, 1925–36*, and *Annual Statistics of Fruit and Floriculture, 1937*—Dominion Bureau of Statistics. In this and following tables of the present report, records supplied by District Horticulturist at Vernon refer to the Okanagan Valley proper, and do not include Creston, Nelson, Grand Forks or other B.C. fruit areas.

TABLE 5.—PRODUCTION OF FRUITS IN THE OKANAGAN VALLEY BY KINDS, 1920–1937*

(in thousands of boxes or crates)

Year	Apples †	Crab-apples †	Pears †	Plums and Prunes ‡		Cherries ‡	Peaches ‡	Apricots ‡	Total
1920	1,317	149	68	220		109	153	48	2,064
1921	2,769	324	86	306		79	137	63	3,765
1922	2,849	194	92	266		106	180	66	3,752
1923	3,054	152	86	280		86	123	41	3,822
1924	2,162	128	81	154		51	45	32	2,654
1925	2,560	116	16	18	59	52	2	4	2,828
1926	3,569	171	145	112	213	162	195	139	4,706
1927	3,038	154	107	44	162	64	100	40	3,708
1928	4,146	177	175	98	234	82	172	99	5,183
1929	3,081	118	129	63	151	111	142	100	3,895
1930	4,147	130	143	71	152	103	163	33	4,942
1931	3,145	136	160	65	115	86	125	121	3,954
1932	4,774	130	132	93	187	146	247	166	5,874
1933	4,338	131	232	62	159	121	219	101	5,363
1934	4,944	143	228	109	231	162	316	300	6,433
1935	4,581	132	232	73	254	103	132	99	5,606
1936	4,257	128	233	67	145	129	82	4	5,044
1937	5,397	148	275	76	217	116	415	158	6,800

* Compiled by District Horticulturist, Vernon, B.C. (part of Exhibit 133).
† Boxes containing 42 pounds net, apples and pears; 36 pounds net, crabapples.
‡ Crates containing 20 pounds net.

The relatively large volume of the apple crop in the Okanagan Valley as compared with its production of small and soft fruits is shown by the above record. Throughout the period from 1920 to 1937 apples have represented about 80 per cent of the physical volume of fruit production. The disposition of the apple crop is the central marketing task of the Valley and of the other fruit

growing districts of the province. Consequently much of the material in this report is concentrated on the marketing of the apple crop. The value of the apple crop of the entire province represents about 70 per cent of the total market income of the fruit growers, as is shown in Table 6. The acreage in apples and other fruits in the Okanagan Valley in 1925 and 1935 is recorded in a table in Appendix II.

TABLE 6.—VALUE OF PRODUCTION OF APPLES AND OF ALL OTHER FRUITS, BRITISH COLUMBIA, 1926–1937*

(in thousands of dollars)

Year	Apples	All other Fruits	Total
	$	$	$
1926	5,038	2,243	7,281
1927	4,910	2,113	7,023
1928	5,650	2,234	7,884
1929	4,495	2,197	6,692
1930	5,579	1,971	7,550
1931	3,099	1,674	4,773
1932	3,527	1,547	5,074
1933	4,142	1,666	5,808
1934	4,332	2,192	6,524
1935	4,320	2,185	6,505
1936	4,348	1,565	5,913
1937	5,136	2,324	7,460

* *Fruit Statistics of Canada, 1925–36*, and *Annual Statistics of Fruit and Floriculture*, 1937—Dominion Bureau of Statistics.

The number of growers in the Okanagan was 1,566 in 1920. In 1935 the number had increased to over 2,400 growers, cultivating a total of 23,752 acres, or an average of 9·8 acres per grower, as shown by Table 7.

TABLE 7.—NUMBER OF FRUIT GROWERS, AND AVERAGE ACREAGE PER GROWER, BY DISTRICTS, OKANAGAN VALLEY, 1935*

District	No. of Growers	Average Acreage per Grower
Kamloops—Main Line	34	17·7
Salmon Arm—Sorrento	240	6·8
Armstrong—Enderby	79	3·4
Vernon	215	15·4
Oyama	79	11·5
Okanagan Centre—Winfield	90	14·4
Kelowna	421	13·5
Westbank	69	8·4
Peachland	84	5·2
Summerland	364	7·0
Naramata	95	9·2
Penticton	245	8·5
Kaleden	48	9·7
Oliver—Osoyoos	251	9·3
Keremeos—Cawston	115	6·0
Total	2,429	9·8

* Supplied by District Horticulturist, Vernon, B.C.

The average acreage unit south of Kelowna is much smaller than the average in the north end of the valley. A more temperate climate in the southern districts permits intensive cultivation of soft fruits, yielding a proportionately higher return per acre to the grower than apples and pears.

The number of trees per acre is limited now, through more or less uniform practice to approximately 60 per acre, ten less than the number planted before 1930 as recorded in the 1925 tree planting survey. While the number of trees per acre has declined, the per acre yield of apples has increased as the result of a more careful selection of trees and more scientific cultivation. Appendix IV records the increase in the yield per acre between 1925 and 1935. With an average size orchard of 9·8 acres, and with an average production of 300 boxes of apples per acre in the north and 354 boxes in the south, the northern grower produces approximately 3,000 boxes and the southern grower approximately 3,500 boxes per season. Such statistics, however, are general and can do little more than present the approximate individual production in many districts throughout the Valley.

Substantial advance has been made in recent years in additional cold storage facilities, a necessary factor in the marketing of these perishable products. The following table indicates the extent to which cold storage facilities have been built. Capacity has been more than doubled since 1934.

TABLE 8.—CAPACITY OF COLD STORAGE WAREHOUSES IN THE OKANAGAN VALLEY, 1925–1938*

(in thousands of boxes

Year	Additions	Total
1925	117,897	117,897
1926	25,000	142,897
1927	30,000	172,897
1929	70,000	242,897
1930	96,000	338,897
1931	120,000	458,897
1932	201,458	660,355
1933	103,000	763,355
1934	49,000	812,355
1935	505,700	1,318,055
1936	174,000	1,492,055
1937	264,758	1,756,813
1938	102,000	1,858,813
Total	1,858,813	

* Part of Exhibit 46 (prepared by W. H. Hembling, British Columbia Fruit Board, Kelowna, B.C.)

The development of cold storage facilities has done much to influence marketing methods in the Okanagan Valley. The ability to preserve a greater portion of the crop for a longer time has enabled fruit shippers to spread shipments over many weeks and to lessen the glutting of markets which frequently occurred because of the need to dispose of the product quickly.

Selling prices of Okanagan Valley products, in common with agricultural prices generally, showed a marked decline after 1929. The following table sets out the broad average prices paid to shippers, without reference to size or grade of fruit. These prices are only estimates based on sales throughout each season, and at best are very rough averages.

TABLE 9.—AVERAGE PRICES OF OKANAGAN FRUITS, F.O.B. OKANAGAN POINTS, 1925–1937*

(per packed box or crate)

Year	Apples	Crab-apples	Pears	Plums	Prunes	Cherries	Peaches	Apricots
	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
1925	1 40	1 20	2 25	0 80	0 80	2 25	1 00	1 25
1926	1 30	0 85	1 40	0 55	0 55	1 35	0 80	0 90
1927	1 52	1 05	2 00	0 61	1 26	2 63	1 30	1 54
1928	1 33	1 03	1 66	0 97	0 55	1 90	0 75	0 83
1929	1 35	1 20	2 20	1 20	0 50	2 40	0 95	1 20
1930	1 30	0 95	1 50	0 80	0 65	2 25	1 00	1 25
1931	1 05	0 58	1 35	0 70	0 69	1 65	0 95	0 90
1932	0 85	0 70	0 75	0 35	0 60	1 25	0 95	0 85
1933	1 00	0 60	1 25	0 80	0 75	1 75	1 00	1 25
1934	1 00	0 60	1 25	0 80	0 70	1 40	0 90	1 00
1935	0 90	0 55	1 20	0 75	0 65	1 50	1 00	1 00
1936	1 00	0 70	1 15	0 70	0 60	1 30	0 80	1 05
1937	0 95	0 70	1 35	0 60	0 60	1 80	0 70	0 80

* Statistics supplied by District Horticulturist, Vernon, B.C. (part of Exhibit 133).

3. Production and Shipping Methods

(a) Fruit Growing

The risks of fruit growing are similar to those encountered in the cultivation of other products of the soil. The fruit grower must contend with the vicissitudes of climate, the varying capacities of well-worked acres and the visitations of parasitic insects. Irrespective of his return, the grower has certain overhead costs to meet, with irrigation tolls and taxes comprising the most substantial part of the fixed expenses. Cost records examined and estimates given in the course of this investigation disclosed a cost range of 33 to 70 cents per box, but no satisfactory estimate of the cost of producing a box of apples was made. It is understood that the Economics Division, Marketing Service, of the Dominion Department of Agriculture may undertake a study dealing with this question.

To the anticipated "normal" problems of fruit production have been added the changes in apple "fashions". Consumer caprice as to desirable varieties makes it necessary to limit the production of those which become less popular and to increase the tree planting of varieties more consistently favoured by the public. To accomplish such changes and to correlate them with a view to controlling and increasing the proportion of popular varieties, committees of growers in the Okanagan, in co-operation with the Provincial Government, have planned long-range tree substitution schemes, to give growers the opportunity of planting popular "economic" varieties rather than "uneconomic" ones for which the demand has slackened in important markets.

(b) Fruit Packing and Shipping

The general grades and kinds of pack to which fruit packers must conform are established by regulations of the British Columbia Fruit Board and by rules laid down by the Dominion Minister of Agriculture under the Fruit, Vegetable and Honey Act. The Fruit Board has power to order that certain sizes of certain varieties shall be shipped to particular areas where these sizes are in demand. This emphasis on special grades and sizes appears to be the result of a demand for such particularization in certain urban markets. Many jobbers and shippers have expressed the opinion, however, that over-grading exists in the industry, and that one effect has been a substantial increase in packing costs.

The swift rise in production of apples and other fruits brought a sharp increase and improvement in packing and shipping facilities in British Columbia. From the half dozen packing plants in the Okanagan Valley which appeared between 1896 and 1905, the number had grown to eighty-eight in 1938. In addition to these, a number of growers have their own packing facilities. While the practice of individual grower packing has not developed appreciably, there are several grower-packers whose highly individualistic activities have led them to pack and sell fruit without strict regard to the requirements of the British Columbia Fruit Board. The great bulk of the fruit, however, is packed by the regular packing agencies in the Valley. These may be classified according to function and according to ownership. Most packing houses also solicit orders and ship their packed products. In such cases they may be described as packer-shippers. There are seventy-six packer-shippers in the Okanagan and only twelve packing houses do not have shipping facilities. Only a small number of packers, sixteen, receive and pack small fruits in addition to other fruit and vegetable products.

All Okanagan packing plants are either co-operatively or independently owned and operated. The co-operatives are divided into those affiliated with and shipping through the principal co-operative selling agency, Associated Growers of British Columbia, and those not so affiliated but maintaining direct contacts with jobbers and other purchasers. The total number of co-operative packing houses is approximately twenty-five, although this figure is subject to qualification due to the reported reorganization of independent packer-shippers into a co-operative organization with a common selling agency.[4] The remaining packers, however, including those recently reorganized as indicated, may be described as independent, being privately owned and operated packing companies.

Okanagan Valley shippers, with the exception of one co-operative selling through Sales Service Limited, may be divided into the following groups:—

- Co-operative Shippers
  - Local members selling through Associated Growers of British Columbia Limited
  - Non-members of Associated selling direct
- Independent Shippers
  - Selling through Sales Service Limited
  - Selling direct

Twenty-three of these shippers are co-operatives which employ, as local members, the facilities of Associated Growers of British Columbia Limited; there are only two or three non-member co-operatives which sell directly on their own behalf. Thirteen independent shippers sell through Sales Service Limited, an independent selling agency, which began operating in 1926, while the remainder of the independent shippers sell directly to the Canadian and export markets.

In all, four important groups of shippers are operating in the Valley:

(1) Associated Growers of British Columbia Limited and its locals;
(2) Sales Service Limited and its member shippers;
(3) The "Foursome": four independent shippers[5] having a very loose association in which a measure of joint action is undertaken for their mutual advancement and protection; and
(4) Other independent shippers.

The relative importance of these groups, as indicated by the share of domestic shipments of British Columbia fruits handled by each, is shown in Table 10.

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[4] *Vancouver Province*, March 16, 1939; *Vancouver Sun*, March 23, 1939; *Vernon News*, March 23, 1939; *Vancouver Province*, March 24, 1939; for reference to this development *see* page 15.

[5] British Columbia Fruit Shippers Limited; B. C. Orchards Limited; McLean & Fitzpatrick Limited; Occidental Fruit Company Limited.

TABLE 10.—SHIPMENTS OF BRITISH COLUMBIA FRUIT TO DOMESTIC MARKETS, CLASSED BY GROUPS OF SHIPPERS, 1935–1938*

(From Okanagan, Creston, Nelson and Grand Forks)

(by cars)

Year	Associated Growers		Sales Service		"Foursome"		Others		Total
	cars	%	cars	%	cars	%	cars	%	cars
1935–36	1,997	38·92	845	16·47	980	19·10	1,309	25·51	5,131
1936–37	1,770	37·18	911	19·14	951	19·98	1,128	23·70	4,760
1937–38	2,198	39·92	1,030	18·70	1,107	20·11	1,171	21·27	5,506

* Compiled from material supplied by B.C. Fruit Board (Exhibit 137).

These percentages show the leading position of Associated Growers and the local co-operatives selling through its agency. They indicate also that the co-operative movement cannot follow its own marketing and other policies without taking into account the policies of the other groups.

A shipper is the agent and consignee of a grower with whom he enters into a consignment agreement. The shipper receives fruits and vegetables on consignment from his growers and disposes of these products in the most profitable markets. As the grower's agent the shipper has certain moral and legal responsibilities. He deals with the grower's goods as a consignee and must exercise the care and assume the trust that his special position requires. Except as he has been limited by the regulatory power of administrative boards created to control the production and marketing of various products in the province, the British Columbia fruit and vegetable shipper has all the general powers of an agent. Then, too, he is aided by the tradition underlying shipper-jobber relations which has resulted in shippers having a rather large field in which they may and do exercise a legitimate and desirable initiative. The shipper maintains contacts with marketing outlets—either jobbers or retailers —and almost invariably markets the product with the assistance of a broker, who becomes, for the purpose of a given transaction, the agent of the shipper and sub-agent of the grower.

Orders for the grower's products are sought by the shipper and are filled from "pooled" accumulations of all growers' products consigned to a given shipper and in his warehouse. By pooling the consignments of all his growers the shipper can offer a wide variety of grades and sizes. It is his reponsibility to adjust claims made by jobbers, to decide what prices will be accepted for his growers' commodities, and to distribute the sales receipts equitably amongst the growers who have participated in a particular pool. Growers are entitled to insist upon audits being made of these pool accounts, but, at least in the Okanagan Valley, this is not the general practice.

The care with which funds of the grower in the hands of the shipper are to be treated has been defined by statute in addition to the basic common law rules governing such liability. From the funds received for sales of the growers' pooled products the shipper deducts his selling charges, and, if that shipper performs packing functions, the packing charges. The balance, less loans advanced to the grower, is returned to the producer-principal. Such advances often are made by independent shippers, and all such grower-shipper contracts contain clauses providing for the continuance, at the option of the shipper, of this contract to employ and consign to such shipper for the duration of the indebtedness. The contract remains in force if the indebtedness is not liquidated by a given date, usually May 1st.

Many growers in the Okanagan Valley appear to be in a continuous state of indebtedness to certain shippers, with the result that these growers find it difficult to shift from one shipper to another. If they get deeply into debt they cannot turn to another shipper unless they are able to repay the loans or have their prospective shipper-agent assume the old liabilities. It has been said that because of such obligations many growers are compelled to remain with shippers whom they distrust and whose returns they deem unsatisfactory. Loans are not made by co-operatives, and growers in the co-operative movement are not, therefore, so affected. Since, however, well over a thousand Okanagan growers are not co-operative members, the question remains important and difficult.

Independent shippers seem to have fared well in the past five to ten years. An examination of the annual financial statement of ten independent shippers in the Okanagan Valley indicated that their financial position in most cases is strong and that their annual net profit shows a very substantial return on investment.[6] Such relative prosperity on the part of shippers in districts where complaints of insecurity and low returns have been widespread among producers undoubtedly leads to antagonism and suspicion. Many shippers, through careful grading and variety selection for pools, have built up reputations that make their brands desirable, and many of them have served their growers well through aggressive salesmanship and diligent cultivation of markets.

In 1935 the shippers of the Okanagan Valley organized themselves into the Okanagan Federated Shippers Association under the provisions of the Provincial Societies Act. This association succeeded the Growers and Shippers Federation, which had operated under the Produce Marketing Act of 1927, and the Shippers Council and other shipper groups which were established after the judgment declaring the British Columbia Produce Marketing Act invalid in 1931. The objects of the Federated Shippers Association touched every aspect of the marketing of Okanagan fruits and vegetables. It proposed to protect shipper interests by discussions with jobbers as to commissions, profits, allowances, rebates, etc., to set maximum or minimum prices at which products might be sold, and to make regulations, not inconsistent with those of the British Columbia Tree Fruit Board, that should be binding upon the members of the Association. The Association has exercised a substantial influence upon decisions of the British Columbia Fruit Board on packs, cartels and other matters. With the assumption of increasing authority by the Fruit Board and the growth of a demand for central selling, it does not appear that the Federation will continue to exercise the authority it once had.

(c) *Selling Agents in the Okanagan Valley*

The two leading shipping groups in the Okanagan Valley—Associated Growers of British Columbia, Limited, of Vernon, and Sales Service Limited, of Kelowna—together handle between 55 to 60 per cent of the fruit crop produced in the districts which are regulated by the British Columbia Fruit Board.

These selling agents are organizations which represent shippers and perform, in a single office, all the selling functions of the shippers. By centralizing their functions it was intended to reduce costs and to provide a more efficient sales connection with jobber-purchasers. These selling agents make offers and accept orders, apportion them among the members, ascertain marketing conditions, negotiate claims, and do almost everything that the individual shipper would have had to do to sell and service the product consigned to him. For such service the selling agency receives, in the case of Sales Service Limited, a fixed sum per car, or, in the case of Associated Growers, a fixed charge less a future rebate if

[6] *See* Appendix IX for data showing returns for 10 independent shippers, 1936-1938.

such charge is in excess of the selling cost determined at the conclusion of the fiscal and crop year. Similar rebating policies are followed by co-operatives which are not members of the Associated Growers, such as, for example, the Pyramid Co-operative Association, Penticton, B.C.

A contract between Sales Service Limited and any one of its members requires that a certain fee per box, per crate or per ton, according to the particular product, be paid for such service. For apples the fee is three cents per box, and with approximately 750 boxes to a car the payment amounts to approximately $22.50 per car. The contract also provides for an additional schedule of fees in lieu of brokerage payment. Sales Service thus pays brokerage, and the shipping member is liable for no other charge under the contract, except in connection with losses arising out of claims against particular shipments for which he is responsible.

Contracts between Associated Growers and its members or "locals" are "three-way" contracts between the grower, his local, and Associated Growers of British Columbia, Limited. Broad powers to dispose of the product and to deduct various charges are given to Associated Growers; it may also deduct one per cent of the total yearly proceeds of fruit and vegetable sales for capital and reserve purposes. No fixed series of service charges obtains here as in the Sales Service contract; but from certain initial deductions rebates are given to the local if the selling and subsidiary costs are less than were anticipated.

4. Producer Organization in the British Columbia Fruit Industry

(a) *The British Columbia Fruit Growers Association*

With a great advance in fruit production and an increase in the number of commercial growers, there arose a need for some organization which could express the viewpoint of the growers and which would bear much the same relation to British Columbia fruit cultivators as the well-known grain grower and farmer organizations bear to the prairie crop producers. Guided in part by these objectives, the British Columbia Fruit Growers Association was formed in 1923, under the provisions of the Provincial Societies Act. The organization was to deal with all matters short of marketing, having for its objects ". . . the advancement of horticulture in all its branches, particularly the promotion of a better knowledge on the part of all fruit growers as to the growing and marketing of our fruit, and to facilitate successful marketing other than sale and distribution. . ."[7]

The fortunes of the association have varied with the years. For a time it functioned as a voluntary organization and depended for revenue on membership subscriptions. Since the enactment of the Natural Products Marketing Act of 1934, with its Tree Fruit Scheme of the same year, the association has been financed largely by funds received from the British Columbia Tree Fruit Board and its successors. These funds have come from levies imposed on the growers by the Board at the rate of one-fifth of a cent per box. In 1937 the payment to the association amounted to $9,600. With these funds the B.C.F.G.A. has been able to carry on as the organ of the fruit growers.

The association has a direct relationship to the British Columbia Fruit Board, since growers who are elected as delegates to nominate members of the Fruit Board automatically become directors of the British Columbia Fruit Growers Association. These directors, in turn, elect a president of the association and executive members. The association is the foremost representative

[7] From the preamble to the constitution of the British Columbia Fruit Growers' Association (Exhibit 16).

of grower opinion in the British Columbia fruit producing industry. To it producers have turned for leadership in the formulation of important selling policies, and whatever lead is established by the B.C.F.G.A. ultimately must be carefully considered, if not followed, by the agency charged with the supervision of the industry, the British Columbia Fruit Board.

(*b*) *The Co-operative Movement in the Okanagan Valley*

One of the first attempts at co-operative organization in the marketing of British Columbia fruits and vegetables resulted in the formation of the Okanagan Fruit Union in 1908. In 1913 several independently operating co-operatives joined forces and organized the Okanagan United Growers, Limited, as a co-operative selling and distributing agency. Some time later the Growers' Sales Agency was formed, a brokerage unit representing the Okanagan United Growers on the prairies. In these early years of the co-operatives, the great bulk of the Okanagan apple crop did not find its outlet on the prairie market. Export shipments and sales to New York City accounted for a great percentage of the apple business.

By 1921 the heavy pre-war plantings began to produce, and a very heavy crop of over three million boxes pointed to marketing troubles ahead. In the following year, 1922, the crisis came. A large crop, low prices, and a glut in the Okanagan's most important market created havoc with producer returns. It was at this time that direct or cash buying by shippers or jobber agents ceased. Steadily declining prices did much to encourage growers to sell to shippers on consignment, a system which has prevailed in the Valley ever since except for a short period between 1932 and 1934.

Conditions in the early twenties were responsible for the campaign which co-operative leaders then began for a complete co-operative control of the Okanagan apple crop. By 1923 the movement was well upon its way with the formation of the Associated Growers of British Columbia, Limited. This organization, financed by the growers with governmental assistance, purchased the facilities of all the leading shippers and amalgamated them with the existing co-operatives. Okanagan United Growers, Limited, ceased to exist, and Associated Growers of British Columbia, Limited, became the central selling agency for all the co-operative locals. Legislation was passed to prevent independents from soliciting grower members of co-operative locals. The Associated became a clearing house for co-operative policies and united action on the part of the locals. The various local shipping houses maintained their own entity and to a large degree their autonomy. The Associated was federal rather than unitary in character.

Associated Growers in its first year obtained about 85 per cent of the apple tonnage of the Valley, but returns were not as satisfactory as had been hoped. Thereafter the Associated tonnage began to decline: it was 75 per cent in 1924-25, 74 per cent in 1925-26, 72 per cent in 1926-27, 71 per cent in 1927-28, and 70 per cent in 1928-29.[8] To-day the Associated comprises 23 local packing-shipping co-operatives in the Okanagan and adjacent districts and as far east as Nelson, B.C. In 1923-24 the Associated had almost 2,700 growers enrolled through its locals, but that number declined to 2,100 in 1932, 1,620 in 1933, 1,325 in 1934, 1,374 in 1935, 1,327 in 1936, 1,293 in 1937 and 1,360 in 1938. Since 1934 membership has been more or less stabilized. Similarly the tonnage has fallen appreciably from the earlier level, as is shown by Table 11.

[8] Clement, *Marketing Legislation in British Columbia,* (1938) 19 Canadian Society of Technical Agriculturists (reprinted) 405.

TABLE 11.—VOLUME OF APPLE SHIPMENTS THROUGH ASSOCIATED GROWERS OF BRITISH COLUMBIA, LIMITED, 1929–1938*

(in thousands of boxes)

Crop Year	Shipments of Associated Growers	Total Okanagan Shipments	Associated Growers Percentage
			%
1929–30	1,660	3,081	53·88
1930–31	2,279	4,147	54·94
1931-32	1,575	3,145	50·06
1932-33	2,219	4,774	46·49
1933-34	1,656	4,338	38·18
1934-35	2,072	4,944	41·90
1935-36	1,904	4,581	41·55
1936-37	1,734	4,257	40·74
1937-38	2,148	5,397	39·80

* From Annual Reports, Associated Growers of British Columbia, Limited, 1929 to 1938 (part of Exhibit 81), and statistics compiled by District Horticulturist, Vernon, B.C. (part of Exhibit 133).

Marketing in the last few years approximately 40 per cent of the crop, the Associated continues to be the most important single factor, but not the only one, and hence its control is far less than had been intended by the original plans for Valley co-operation. Its principal markets are in the prairie provinces and in the United Kingdom. At the present time the co-operative movement is co-operating with wholesale purchasers of fruit in order to maintain its outlets in the prairie markets. This explains some of the concerted action which has occurred between Associated Growers and the large independent sales agency, Sales Service, Limited.

One further development in recent months is that almost all the important independent shippers in the Okanagan Valley have announced their reorganization into some form of co-operative shipping house. No details of the methods to be employed in the conversion have been secured, but it is understood that Sales Service, Limited, is to become a selling agent for co-operatively organized members. Another group of independents, consisting of five large shipping houses controlling between 15 and 20 per cent of the apple crop, have joined in creating a new selling agency under the name of "United Distributing Co-operative Association."[9] No information has been secured as to the nature and objectives of this latter group.

5. Government Control of Marketing in British Columbia

The unsettled conditions in the fruit growing industry between 1921 and 1926 gave impetus to a movement for some form of compulsory marketing control supported by legislation. Growers were able to enlist governmental support and in 1927 the Produce Marketing Act was passed, creating machinery for the control of British Columbia fruit and vegetable production and marketing. In the same year the British Columbia Legislature passed the Sales on Consignment Act, a statute designed to assist in remedying conditions disclosed in the investigation made in 1924-25 under the Combines Investigation Act. The Sales on Consignment Act deals specifically with the type of relationship between jobbers and brokers which was condemned by the courts following that investigation, and makes special provision to govern relations between producers and their consignees in such matters as the settling of accounts and the auditing of books.

[9] *Kelowna Courier,* March 23, 1939.

The British Columbia Produce Marketing Act of 1927 created an administrative board, the Interior Committee of Direction, with broad regulatory powers over prices and terms of sale.[10] The Committee was composed of a chairman appointed by the Lieutenant-Governor in Council, and two other members nominated by the Growers and Shippers Federation. The latter group, mentioned in the legislation, was made up of licensed shippers and grower representatives, and was to be the liaison between the Committee and the fruit shippers and producers. It was to this body that the Committee of Direction reported and in a measure was responsible, but strictly the British Columbia Growers and Shippers Federation existed "purely and simply as the body which makes nominations for two of the members of the Committee and through which the advice of shippers and growers may be given to the Committee."[11]

High prices on the prairies and a short crop in 1927 assisted in establishing the Committee as a popular agency of control. Its territorial jurisdiction was extended and the number of subjects with which it dealt was increased. By 1930, however, low prices and unsatisfactory marketing conditions on the prairies stimulated grower dissatisfaction. There was a sharp rise in the number of independent shippers, a corresponding decline in the tonnage handled by the co-operatives, and the appearance of the grower-shipper as a new factor in the marketing situation.

At this time also the Produce Marketing Act was challenged in the courts, and after a year or more of litigation it was declared ultra vires, in February, 1931.[12] Meanwhile, in 1930, the chairman of the Committee of Direction, F. M. Black, had already submitted for the consideration of the growers an elaborate "central selling" scheme by which all selling in the Valley would be done by a single agency with existing shipping houses reduced to the status of packing plants. In the same year the Provincial Government appointed W. Sanford Evans of Winnipeg as a one-man Royal Commission to investigate the economic basis of the interior tree fruit industry. His report[13], which appeared a month before the Supreme Court invalidated the Produce Marketing Act, disapproved of the legislation as well as of any form of government intervention which had the effect of severely restricting the freedom of growers and shippers in marketing their products. The Supreme Court decision threw out all control at a time when prices were declining. The only provision for regulation for the balance of the 1931 season was a voluntary association of shippers, such as had been recommended in the Sanford Evans report, "for the exclusive purpose of reporting and exchanging prices and terms and holding occasional conferences on these matters". Between 80 and 90 per cent of the shippers were thus organized into a Shippers Council and were aided by a Bureau of Information set up by the Provincial Government and charged with the publication of reports of all sales. Without legal power, the Shippers Council was not in a position to control shipments to prairie markets and elsewhere, and at the end of the crop season it was found that 800 cars had left the Okanagan Valley of which the Council had had no record.

The Committee of Direction, which disappeared when the Produce Marketing Act was declared invalid, was succeeded by the 1932 Apple Cartel under the management of Major M. V. McGuire. This was a voluntary organization of shippers, "brought into being as a result of the chaotic marketing conditions which existed in the early stages of the 1932 shipping season".[14] The Cartel

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[10] For a summary of the work of the Committee *see* Richards, *Marketing of Fruit in the Okanagan Valley of British Columbia under the Interior Committee of Direction*, The Economic Annalist (February and March, 1931), Economics Branch, Department of Agriculture, Ottawa.

[11] Directors' Report, British Columbia Growers and Shippers Federation, January 5, 1928.

[12] *Lawson* v. *Interior Committee of Direction*, 1931 S.C.R. 457.

[13] *Report of the Royal Commission Investigating the Fruit Industry* (Part II, 1931).

[14] 1932 Apple Cartel, Final Report and Financial Statement, May 31, 1933.

controlled about 84 per cent of the interior crop, handling 5,107 cars; of which 2,662 were sold in domestic markets, 2,291 were exported, and the remainder, 154, were dumped. The Cartel operated on the principle of permitting the sale of different varieties only as the market appeared able to absorb them, and as earlier varieties began to disappear. Minimum prices were established but these were not obligatory and were not maintained. Internal competition operated in spite of cartel restrictions.

In 1933 a heavy crop was in prospect. Preparation for another cartel scheme broke down under the weight of shipper disagreement. Growers demanded a "cent a pound or on the ground", a threat which meant that they would leave their apples unpicked unless they received a minimum of 40 to 42 cents per packed box.[15] Feeling ran high throughout the interior, and finally the Okanagan Stabilization Board was formed, including all the Valley shippers, many of whom joined under strong pressure from producers. The Board's policy embodied many of the suggestions made by F. M. Black in his central selling scheme proposed in 1930. All sales were to be made over one desk, and a levy of ½ cent per box provided funds to defray expenses. The power of the Board finally was challenged when one of the shippers refused to pay the required levy. The court found that the agreements upon which the Stabilization Board operated were illegal and unenforceable as being in restraint of trade within the meaning of sections 496 and 498 of the Criminal Code.[16]

With the passage in July, 1934, of the Dominion Natural Products Marketing Act[17] and the parallel British Columbia act[18], a broader attempt at legislative control was initiated and the lines of action then laid down are largely in use now. The federal legislation provided for the creation of a Dominion Marketing Board with broad powers, and for the establishment of local boards authorized to administer schemes approved by the Governor General in Council pursuant to this Act. The first scheme approved under the Act on August 25, 1934, was the British Columbia Tree Fruit Scheme, to be administered by the British Columbia Tree Fruit Board[19] whose members were Messrs. W. E. Haskins, O. W. Hembling and George A. Barrat. The scheme was to apply to tree fruit production in the interior of British Columbia and, of course, applied mainly to the important growing area of the Okanagan Valley. The Board was given authority to designate a selling agency, to conduct equalization pools, to license shippers, and to raise by toll funds for its operations. Although the Tree Fruit Board was given no authority to fix prices, it attempted a measure of price control, only to be cautioned against such action by the Dominion Marketing Board.

A Shippers Council was appointed to consult with the Tree Fruit Board and to keep its members advised of the views held by shippers with respect to the policies that should be followed by the Board. The Federal Act did not confer

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[15] Clement, Report on the Enquiry conducted on behalf of Six Locals of the Associated Growers (1933), p. 3.

[16] *McGuire* v. *Crestland Fruit Company, Limited,* judgment of Murphy, J., March 15, 1934 (unreported).

[17] (1934) 24-25 Geo. V., c. 57.

[18] (1934) 24 Geo. V., c. 38; as amended and revised by R.S.B.C. 1936, c. 165; (1937) I Geo. VI., c. 41.

[19] P.C. 2105, as amended by P.C. 1690, June 29, 1935; other B.C. Schemes were Fruit Export Marketing Scheme, Sept. 8, 1934; British Columbia Red Cedar Shingle Export Scheme, Oct. 16, 1934; British Columbia Dry Salt Herring and Dry Salt Salmon Scheme, Oct. 22, 1934; Milk Marketing Scheme of Lower Mainland of British Columbia, Jan. 1, 1935; British Columbia Interior Vegetable Marketing Scheme, March 4, 1935; British Columbia Coast Vegetable Marketing Scheme, March 4, 1935; British Columbia Hothouse Tomato and Cucumber Scheme, June 10, 1935; British Columbia Halibut Marketing Scheme, June 10, 1935; British Columbia Small Fruits and Rhubarb Marketing Scheme, June 10, 1935.

any authority over intra-provincial shipments, and on November 10, 1934, a scheme under the provincial Natural Products Marketing Act became effective, giving the local Board authority with respect to marketing control within the province.

Faced with a very heavy crop in 1934-35 and with a smaller percentage of the small exportable sizes, the Board had to find a domestic market for almost a million boxes more than had been sold in the preceding year. In the following crop year, 1935-36, the Board had better fortune. A smaller crop and a very active export market accelerated the crop movement and resulted in generally more satisfactory returns, which, however, did not approach the level that had been predicted in the autumn of 1935.

Subsequently, on June 17, 1936, the Dominion Natural Products Marketing Act was declared to be beyond the powers of the Parliament of Canada, and the decision was affirmed by the Judicial Committee of the Privy Council on January 28, 1937. The British Columbia Tree Fruit Board was reorganized and obtained the necessary authority to proceed by way of amendments to the British Columbia Natural Products Marketing Act. The provincial Natural Products Marketing Act was challenged in the courts, but the Court of Appeal of British Columbia twice upheld its validity [20] and the Judicial Committee of the Privy Council affirmed the power of the province to enact such legislation.[21]

Extensive authority has been conferred upon the Board by the statute and schemes which have been approved under it. The designation of a marketing agency, the control of quantities to be marketed, the time of marketing, the licensing and concellation of licences of shippers, the levying of fees, the investigation of company shipping records, the fixing of prices for shipments within the province, the making of regulations concerning packing and storing, all these and other powers give the administrative agency a substantial measure of control over the disposition of the British Columbia fruit crop. Not all the apple-producing areas in the province come within the jurisdiction of the Board, and the activities of "uncontrolled" areas add greatly to the Board's difficulties.

The decision of the Supreme Court in June, 1936, led the Tree Fruit Board to believe that, however extensive the authority given under the provincial statute, it could not itself exercise control of the marketing of Okanagan fruit outside the province. In order to overcome the statutory and constitutional limitations of its position, the Board developed the plan of employing a marketing agency to enable it to maintain some supervision over extra-provincial shipments. It formed a company, B. C. Tree Fruits, Limited, the stock of which was to be owned by, and whose directors were members of, the British Columbia Fruit Board.[22] This company proceeded to make voluntary agreements with shippers, which agreements permitted the company to: (1) regulate the volume of tree fruits shipped to the domestic market, and (2) regulate the flow of such tree fruits by way of orders and regulations as to size, variety, quantity, grade, and the time at which such classification would be marketed. By this contract the Board hoped to do, through the medium of an agreement between the shipper and a private company, what could not be done by the British Columbia Fruit Board itself.

Shippers representing 90 per cent of the present tonnage signed contracts for the 1937-38 season. In that season, however, the Board was faced with

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[20] *Chung Chuck and Mah Lai* v. *Gilmore et al* (1936), 3 W.W.R. 515; in *re* The Natural Products Marketing Act (1937), 4 D.L.R. 298.

[21] *Shannon* v. *Lower Mainland Dairy Products Board,* (1938), A.C. 708.

[22] For a detailed explanation of the formation of the Company *see* Annual Report, British Columbia Tree Fruit Board, 1936-37.

a record crop, as well as with correspondingly heavy production in Nova Scotia and in the United States. Under the circumstances the Board undertook a form of central "one-desk" selling. Almost every shipper agreed to sell his apple stocks to B. C. Tree Fruits, Limited, which would pay the shipper the opening Board prices for a given size and variety, less the average loss due to price reductions and shrinkage. Through this one-desk deal, instituted on December 7, 1937, and continued until early in February, 1938, nearly two and a half million boxes were sold on the domestic market. The scheme was operated for the company by a selling committee consisting of three shippers representing the three dominant shipping groups in the Valley. No greater costs were incurred because of these additional functions, and the Board's operating cost per box was reduced as compared with 1936-1937.[23]

Because of a large crop in 1938-39, the Fruit Board, again through B. C. Tree Fruits, Limited, organized a "one-desk" selling plan which came into operation on October 11, 1938. This plan functioned as a qualified central selling scheme and through it all sales were made to jobbers in Canada. In practice the regular shippers maintained their trade connections, solicited orders and otherwise operated as vendors, but payment was made to B. C. Tree Fruits, Limited, and sales were executed in the name of the company alone and subject to its regulations as to time, method, quantity of fruit to be sold, deductions, rebates, and other pertinent matters.[24]

At present two other schemes affecting the marketing of vegetables are in operation pursuant to the Natural Products Marketing Act: The British Columbia Coast Vegetable Marketing Board and the British Columbia Interior Vegetable Marketing Board.[25] The British Columbia Coast Vegetable Marketing Board[26] operates on the lower mainland and adjoining islands, and controls all the vegetables other than hothouse tomatoes, cucumbers and rhubarb in the defined area. The British Columbia Interior Vegetable Marketing Board markets through a designated agency, the Interior Vegetable Marketing Agency, Limited, and confines the right of sale to this agency alone. It conducts a pool for the equalization of returns and co-operates with the Coast Vegetable Marketing Board.

In the generation and a half of commercial fruit growing in British Columbia, and particularly in the Okanagan Valley, many problems inevitable in the production of a specialized natural product have had to be faced. Not the least of these has been the great growth of production from 1921 to 1938, vastly out of proportion to the increase in the domestic population and per capita consumption and made possible only because of growing export trade with the United Kingdom.

Decreasing returns to growers between 1922 and 1926 and again between 1931 and 1938 have compelled a re-examination of the basis of the industry and have stimulated joint action by producers. The development of the co-operative movement indicates that growers have realized their need for this type of united action to increase their bargaining power in dealing with the immediate purchasers of their products. Through this course the growers have sought to reduce the risks of selling to buyers whose knowledge of the market and whose bargaining power generally has been so much greater than their

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[23] Annual Statement, British Columbia Fruit Board, April 20, 1938.

[24] A British Columbia County Court on June 3, 1938, decided that the Board had no power to set up a separate company, B. C. Tree Fruits, Limited, *Rex* v. *Ritchie,* (1938) 3 D.L.R. 782.

[25] For a discussion of the various boards *see* Clement, *Marketing Legislation in British Columbia* (1939), Canadian Society for Technical Agriculturals, p. 405.

[26] Order in Council 1469, Dec. 16, 1936.

own. Fruit growers, however, have not regarded voluntary co-operation as effective in achieving these ends, and have demanded legislation which would compel all growers to sell their products through an agency. Such legislative control operated from 1927 to 1931, and now has functioned since 1934. Except for a short period between 1934 and 1936, the experiment of governmental supervision has been confined to the province, although the Committee of Direction did attempt some price restrictions on extra-provincial sales. In the main the problem has been to regulate the marketing of a product sold for the greatest part outside the province.

In this report no attempt is made to analyse the economic problems of the industry and to evaluate the usefulness to the industry of the measures which have been employed in aid of their solution. Such a task is beyond the scope of an inquiry under the Combines Investigation Act. It has been thought desirable, however, to give some description of the industry, as well as the tendencies which now appear to be developing, in order that the problems of distribution and jobber organization in the prairie provinces may be better understood.

II. THE MARKETING OF BRITISH COLUMBIA FRUIT IN THE PRAIRIE PROVINCES

1. Domestic and Export Shipments

Nearly half of the apples sold by Okanagan producers in the four crop years 1934-35 to 1937-38 were exported. Net proceeds from these sales were generally less than from the same volume of domestic sales. Since Canadian consumption at any level of prices which has prevailed has been far below the Canadian production, the continuance of the export trade is vital to the industry as it is now constituted. The volume of domestic and export business is shown in the following Table 12.

TABLE 12.—SHIPMENTS OF APPLES FROM BRITISH COLUMBIA TO DOMESTIC AND EXPORT MARKETS, 1934–1938*

(From Okanagan, Creston, Nelson and Grand Forks)

(in thousands of boxes)

Year	Domestic		Export	Total Shipments	Prairie % of Domestic Shipments	Prairie % of Total Shipments	Export % of Total Shipments
	Prairies	Elsewhere					
1934–35	1,587	882	1,794	4,263	64·3	37·2	42·1
1935–36	1,632	594	2,319	4,545	73·3	35·7	51·0
1936–37	1,590	665	1,898	4,153	70·5	38·3	45·8
1937–38	1,771	834	2,568	5,173	68·0	34·2	49·6

* Exclusive of cannery shipments and shrinkage. Record for 1934-35 is also exclusive of shipments of Cookers and Duchess.

The relative purchases of Okanagan fruit by the different provinces, shown in the following table, indicate the extent to which the Valley is dependent on the prairie markets:

TABLE 13.—SHIPMENTS OF APPLES FROM BRITISH COLUMBIA TO WESTERN AND EASTERN CANADIAN MARKETS, 1934–1938*

(From Okanagan, Creston, Nelson and Grand Forks)

Crop Year	Manitoba	Saskatchewan	Alberta	Prairie Provinces	British Columbia	Eastern Provinces	Total
			(in thousands of boxes)				
1934–35†	481	536	570	1,587	306	576	2,469
1935–36	418	569	645	1,632	245	349	2,226
1936–37	428	557	605	1,590	192	473	2,255
1937–38	493	627	651	1,771	372	462	2,605
			(in percentages)				
1934–35	19·5	21·6	23·1	64·2	12·4	23·4	100·0
1935–36	18·7	25·5	29·0	73·3	9·3	15·6	100·0
1936–37	19·0	24·7	26·8	70·5	8·5	20·9	100·0
1937–38	18·9	24·1	25·0	68·0	14·3	17·7	100·0

* British Columbia Fruit Board final crop reports on domestic shipments 1934–35 to 1937–38. (Exhibit No. 135).
† 1934–35 figures do not include Cookers or Duchess.

Per capita consumption of apples in the three prairie provinces and in the whole of the Dominion is shown in Table 14.

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TABLE 14.—CONSUMPTION OF APPLES IN CANADA AND OF BRITISH COLUMBIA APPLES IN THE PRAIRIE PROVINCES, PER CAPITA, 1934-1938*

(From Okanagan, Creston, Nelson and Grand Forks)
(in pounds per year)

Crop Year	All Apples†	British Columbia Apples			
	Canada	Manitoba	Saskatchewan	Alberta	Prairie Provinces
1934–35	28·87	28·41	24·15	31·67	27·79
1935–36	27·95	24·68	25·65	35·48	28·60
1936–37	32·61	25·30	25·11	32·87	27·76
1937–38	36·80	28·84	28·05	35·16	30·49

* *The Apple Crop, Production and Distribution 1937-38* (Department of Agriculture, Marketing Service, Fruit and Vegetable Division, Ottawa); *Canada Year Book* (1938) p. 155; *Final Crop Report*, B.C.F.B. (Exhibit 135).
† This Dominion average includes imports.

2. Brokers

Fruit brokers have operated in the prairie provinces for many years. The methods and usages now employed, as well as the regular shipper-broker contract, represent a considerable improvement upon the older informal custom of broker dealing.

The function of the fruit broker is to act as the agent of the shipper and his growers in connection with all sales of fruit to jobbers and retailers. Since producers as sellers and dealers as buyers are usually hundreds of miles apart, and since the products are subject to rapid changes in price and quality, it is necessary for the growers to have adequate representation at all important points of sale. The broker solicits orders, observes the condition and tendencies of the market and its price level, maintains goodwill for his principal's products, investigates complaints against shipments, and does almost everything that would be expected of a business agent dealing with a perishable commodity. His legal position in relation to the shipper corresponds to that of the shipper in relation to the grower. He must account strictly for any funds that come into his hands on behalf of his principal, and must have no dealings with third parties that are not consistent with his duty as a trusted representative of the shipper.

Three large and a few smaller brokerage firms are now operating in the prairie provinces. Their offices, most of them dealing with all kinds of domestic and imported fruits and vegetables, are located at the following points:[1]

Manitoba—

Canadian Fruit Distributors Limited	Winnipeg
C. H. Robinson Company Limited	"
Grant Distributing Company, Limited	"
M. V. Moore, Limited	"

Saskatchewan—

Canadian Fruit Distributors Limited	Saskatoon
United Brokers	"
G. H. Nellis	"
C. H. Robinson Company Limited	Regina
United Brokers	"

Alberta—

C. H. Robinson Company Limited	Calgary
United Brokers	"
S. S. Savage	"
Canadian Fruit Distributors Limited	Edmonton
United Brokers	"

[1] List of Licensees under the Fruit, Vegetable and Honey Act, August 15, 1938 (Department of Agriculture, Fruit and Vegetable Marketing Division, Ottawa).

While brokers as a rule perform agency functions alone, cars of the more perishable products, such as berries, are frequently shipped to them, and are apportioned by them to the several jobbers. The quantity of all fruits so shipped from British Columbia is not inconsiderable: 72 cars in 1935-36, 134 cars in 1936-37, and 168 cars in 1937-38.

The fruit brokerage business of the prairie provinces is dominated by C. H. Robinson Company Limited (C. H. R.) and Canadian Fruit Distributors Limited (C. F. D.), with United Brokers having a fair share of the business in the four cities in which the branches operate.[2]

Canadian Fruit Distributors Limited is a subsidiary of Associated Growers of British Columbia, Limited. It traces its origin to Growers Sales Agency, Limited, a brokerage organization created by the Okanagan United Growers, the first important Valley co-operative selling agency. Okanagan United Growers, Limited, in 1922 relieved itself of the agency by selling out to a group of independent "legitimate" jobbers. The group consisted of P. Burns & Company, Limited, Plunkett and Savage, Limited, Scott Fruit Company, Limited, Plunkett, Savage & Sutherland, Limited, Cran, Mowat & Drever, Limited, and certain of the MacDonald-Crawford and MacDonald-Cooper fruit houses. They had united into a loosely formed defensive jobber association to meet the pressure of the Nash interests and their brokerage subsidiaries including Mutual Brokers, Limited.[3] Two years after the reorganization of the co-operative movement in the Okanagan in 1923, Associated Growers of British Columbia, Limited, secured brokerage representation on the prairie markets by establishing Canadian Fruit Distributors Limited, which took over the branches of the old Growers Sales Agency. The managers of the various C. F. D. branches operate under supervision of Associated Growers and are paid on a salary and commission basis. The president of Associated Growers is also president of Canadian Fruit Distributors Limited. Profits of the brokerage organization revert to the Associated. Its policies are formulated by Associated Growers, although in most prairie cities the local managers exercise a great deal of initiative in the settlement of disputes, the servicing of customers, and like agency matters.

C. H. Robinson Company Limited had its origin in Mutual Brokers Limited, a subsidiary of Nash Simington Company, Limited. In the United States the C. H. Robinson Company had been a well established brokerage firm for many years before 1913, when its Minneapolis office was acquired by the rapidly expanding Nash fruit organization. Thereafter, until 1924, C. H. Robinson brokerage offices were taken over piecemeal in almost every large produce centre in the United States. In Canada no offices were established in that period. In 1917, however, the American Nash interests organized Mutual Brokers, Limited, in Winnipeg and Vancouver. Other Mutual brokerage offices were opened in 1923 in Saskatoon, Edmonton, Montreal and Toronto.

Following the convictions in the *Rex* v. *Simington* trial in 1926, the Nash group was compelled to reorganize its brokerage connections in Canada. In 1927 a group of former Nash employees in the Mutual Brokers organization in Western Canada purchased the assets and business of Mutual Brokers for a sum reported to be $45,000. The new brokerage organization was called the C. H. Robinson Company Limited, a name chosen for its trade reputation advantages. The president of the new corporation was G. N. Smith, a former employee of Mutual Brokers, Limited, in Calgary and Winnipeg. In 1929 Smith became connected with the American C. H. Robinson Company as vice-president, and in 1932 he assumed further duties in the American company.

[2] While these are designated as branches, use similar names and co-operate with each other, each one is independently controlled and operated.

[3] Investigation into Alleged Combine in the Distribution of Fruit and Vegetables, Report of Commissioner, Feb. 18, 1925 (Department of Labour), p. 13.

The decline in business in 1932 prompted C. H. Robinson Company Limited to reorganize and to co-operate with Canadian Fruit Distributors Limited. It was decided to have Canadian Fruit Distributors and C. H. Robinson accounts in Regina serviced by C. H. Robinson alone, while those in Saskatoon and Edmonton would be handled by Canadian Fruit Distributors. At the same time all the shares of the Canadian C. H. Robinson Company Limited were transferred to C. H. Robinson, Incorporated, a North Dakota corporation with headquarters in Minneapolis. C. H. Robinson Incorporated was a subsidiary of the Nash-Finch Company, and its stock, except for qualifying directors' shares, was wholly owned by the Nash-Finch Company. The Nash-Finch Company in turn had long been controlled by the Nash Shareholders Company, a North Dakota company operating as a holding company for the Nash interests. G. N. Smith became president of the American and Canadian C. H. Robinson companies and the only officer of the Canadian company, all branches of which became local branch offices with legal Canadian headquarters in Winnipeg and with actual operating headquarters in Minneapolis.

In the following year, 1933, Calgary was added to the joint arrangement between Canadian Fruit Distributors and C. H. Robinson, with a C. H. Robinson manager in charge. In Winnipeg no such joint arrangement was made; each company continued to operate its own brokerage office. The allocation of the prairie cities between the two companies was determined by the volume of business each branch had held in these cities prior to the arrangements for office consolidation. The union between these two organizations caused much comment among growers, shippers and dealers. It appears to have been prompted by a desire to curtail expenses in a period when fruit sales were less profitable to brokers than prior to 1931. This, however, was not the complete explanation, for both parties did well financially in the years preceding the arrangement.

There was no evidence to indicate that from 1927 to 1932 the Nash-Finch Company or any of its executive officers, or trustees on their behalf, held any interest in the C. H. Robinson Company Limited (Canada), and G. N. Smith denied that any such financial relationship existed. Nevertheless it appears that frequent consultations occurred between representatives of the Nash Simington and Nash-Finch companies on the one hand and of the C. H. Robinson Company in Canada on the other, and that few major policies were formulated by the Canadian company in Winnipeg without the advice, if not approval, of Nash Simington or Nash-Finch executives. Moreover, the readiness with which shareholders of C. H. Robinson Company Limited of Canada sold their stock to C. H. Robinson Company of North Dakota in 1932, despite the fact that earnings had been extremely good, indicates that some connection must have continued between the Nash organization and the Canadian C. H. Robinson Company after the dissolution of Mutual Brokers and the organization of C. H. Robinson Company Limited in 1927. The evidence given by G. N. Smith, president of both the Canadian and North Dakota companies on the sale to the C. H. Robinson Company, North Dakota, did not clarify the nature of the connection. Again when the Canadian C. H. Robinson company was sold to the Nash-Finch company of North Dakota in 1932, the five or six employee stockholders in the Canadian company received back their original capital investment and re-invested the larger portion of it in the Nash-Finch company of North Dakota.

United Brokers are the third large prairie brokerage group. With separate autonomous offices in Calgary, Edmonton, Saskatoon and Regina, the only ties which appear to hold them together are their use of similar names, the acquisition of similar Okanagan Valley customers, and the exchange of confidential information on local marketing problems. Most of the offices were opened in 1930 and 1931. In recent years United Brokers have received a substantial part of their British Columbia business from the Okanagan Valley

shippers known as the "Foursome", while at the same time Associated Growers was employing its own Canadian Fruit Distributors, and Sales Service Limited, the C. H. Robinson Company.

Brokerage fees on the Western Canadian market have been set by custom and recently were formalized by the British Columbia Fruit Board at the time of its "one-desk" selling schemes of 1937 and 1938.

The order of the Board of October 7, 1938, provided for brokerage fees of twenty dollars per car on all products sold by the company through licensed brokers in the four western provinces and twenty-five dollars per car on all products sold by the company through licensed brokers elsewhere in Canada. The Fruit Board, through whose agency all sales were made, retained three cents per box from all sales to cover brokerage. Out of this fund it paid brokerage to licensed brokers on the above basis. No brokerage was to be paid or allowed on direct sales, where no broker was employed. In such cases the deduction was still made and the amount so taken was placed in a general brokerage payment fund and later rebated among the shippers. Thus any saving in brokerage by one shipper was simply shared by all other shippers. One method of avoiding such penalties for direct sales was devised by a group of independent shippers who set up a licensed brokerage agency known as Southern Okanagan Sales, Limited. Sales were made to the trade direct from the shipper but in the name of this agency. The Fruit Board paid the brokerage to the agency and the proceeds were then shared with the shippers who sponsored it.

The broker's dependence upon the goodwill of the shipper who employs him, as well as of the jobber who may purchase from him, has resulted in practices which have compromised the broker's income and position. From 1927 to 1932 it was the regular practice of both the C. H. Robinson Company Limited (Canada) and Canadian Fruit Distributors Limited, to give 75 per cent of their brokerage earnings to jobbers in proportion to the tonnage purchased by them. The broker evidently considered such contributions necessary in order to retain the business or goodwill of his customers. The practice was a modification of the arrangement prior to 1927 under which all the profits earned by Mutual Brokers, Limited, reverted to the Nash Simington Company, the jobbing organization which owned and controlled it. At times certain shippers have sought to reduce brokerage fees by threatening to transfer business to competing brokers or to undertake a system of direct sales to jobbers or retailers. Caught between two pressures, the broker's position on occasion has been unenviable. However, most fruit brokerage businesses in Western Canada appear to have been reasonably profitable.

The division of brokerage profits between jobber and broker along these lines presents a business problem and poses certain legal issues. A detailed discussion of the right of a broker to enter into such an arrangement with a jobber is not within the ambit of this report. But for the broker to argue that he may dispose of his profits as he sees fit is to ignore the very special relationship that exists between his principals (the growers and shippers) and himself as their agent. His duty to his growers and shippers does not cease with the completion of a particular transaction; nor does it commence only with the negotiations for a particular sale. All the promises made by an agent to third parties with reference to future transactions will affect that agent's duties with regard to the principals he will contract with in the course of his agency business. Hence, the sharing of profits with jobbers cannot be regarded as a transaction independent of the agent's regular business dealings with his principals. There is good reason to think that the courts would not support a contract so entered into by an agent when it deals with future proceeds derived from the agency transactions, particularly if the contract is part of an arrangement that is kept secret from the principals. The fact that

jobbers have secured substantial portions of the earnings of the brokerage agencies through which they buy is evidence of the inordinate strength of the bargaining position of these jobbers in the distribution of fruits and vegetables in Western Canada.

Another system of representation for fruit growers and shippers is that employed by the California Fruit Growers' Exchange. The Exchange, in important prairie cities, employs full time salaried agents, whose sole duty is to represent and sell its particular products. A similar type of direct representation is provided by agents of banana importing organizations. While this method has not been employed in recent years in the marketing of British Columbia fruits and vegetables, a similar device was experimented with during the life of the Interior Committee of Direction. Many Okanagan producers have favoured salaried representatives as likely to be less susceptible than brokers to jobber domination and to be more aggressive in pushing the sale of Okanagan products. It appears that at one time it was intended that Canadian Fruit Distributors should function in this manner. As a grower-owned agency it has many of the advantages of the single representative system and lacks many of the defects of the other. In its development, however, it seems to have become just another brokerage organization, handling all types of commodities, imported and domestic, and sometimes yielding to pressures which should be resisted. Then, too, its joint operations with the C. H. Robinson Company in recent years have not on the whole served to enhance its usefulness as an instrument for the protection and furtherance of the interests of the growers. If recent reports of a severance of this connection are true, it would appear that a step has been taken in the right direction.

3. Jobbers

Approximately 80 jobbing houses, holding licences under the Fruit, Vegetable and Honey Act, operate in the three western provinces. These include jobbers owned and operated as single independent units and those owned and managed as branches of larger chain-jobber organizations. This number does not include small jobbers engaged in purely intra-provincial buying and selling of fruits and vegetables. Most large fruit houses also sell "dry lines" such as staple groceries, confectionery and tobacco products. All the important distributors on the prairies buy and sell Okanagan fruits and vegetables.

Jobbers may use any or all of the following sales methods: (*a*) sale through salesmen soliciting orders, (*b*) sale through circulars to the retail store trade, and (*c*) sale through trucks whose drivers solicit orders and deliver from the stock on the truck. The very large chains and the larger independent jobbers sell through salesmen, with the exception of Macdonalds Consolidated Limited, which sells by means of circulars to the trade. Generally the trucking method is confined to small operators whose retail connections are not so firmly established and who "peddle" whatever commodities can be accumulated for a truck load. Certain of the larger jobbers in recent years have resorted to the "truck warehouse" in order to counteract the severe inroads on their business made by these independent truckers.

As to ownership, the most common classification of jobbers and, for the purpose of this report, the most significant, is that of "major" or "chain" jobbers, and "independents." In the major jobber group are the three large wholesale distributing agencies in Western Canada: Western Grocers Limited, with its subsidiary, Dominion Fruit Limited; Consolidated Fruit Company Limited, and Macdonalds Consolidated Limited. These organizations have branches in nearly every larger town and city in the prairie provinces. Their combined tonnage represents approximately three-quarters of all fruit shipped from the

Okanagan and adjacent districts to the prairie provinces. All three organizations do a very large business in imported fruits and vegetables as well as in confectionery, tobacco, groceries and other "dry lines."

The remaining jobbers may be described as "independents." Some of them are not regarded by their larger competitors as "legitimate" jobbers, for such reasons as small size, "price-cutting" practices, restriction of activities to the fruit season, or employment of trucks to "peddle" their goods. The following tables set out the number of major and independent jobbing houses operating in the three prairie provinces.

TABLE 15.—NUMBER OF MAJOR AND INDEPENDENT JOBBING HOUSES OPERATING IN THE PRAIRIE PROVINCES, JANUARY, 1939*

Province	Major			Major Total	Independents‡	Total
	Western Grocers-Dominion Fruit†	Consolidated Fruit	Macdonalds Consolidated			
Manitoba	8	3	3	14	5	19
Saskatchewan	13	7	11	31	5	36
Alberta	9	7	4	20	5	25
Total	30	17	18	65	15	80

* Taken from lists supplied by the three major jobbers and list of licensees, Fruit, Vegetable and Honey Act, Jan. 3, 1939 (Marketing Service, Fruit and Vegetable Division, Department of Agriculture, Ottawa).

† Excluded from the Western Grocers-Dominion Fruit list are fruit depots, sub-agencies that are not considered as regular branch houses. These are found in Neepawa, Humboldt, Lloydminster, Red Deer, Wetaskiwin, Stettler, Blairmore, Grand Prairie, Estevan and Flin Flon.

‡Not all independent licensees are included here, some are very small and sell only specialties such as potatoes, etc. Some included here are seasonal fruit operators.

TABLE 16.—NUMBER OF MAJOR AND INDEPENDENT JOBBING HOUSES IN FIVE PRAIRIE CITIES, JANUARY, 1939

City	Major			Independents*	Total
	Western Grocers-Dominion Fruit	Consolidated Fruit	Macdonalds Consolidated		
Winnipeg	4	1	2	5	12
Regina	2	2	2	2	8
Saskatoon	2	2	1	1	6
Edmonton	4	2	1	1†	8
Calgary	2	2	1	3†	8
Total	14	9	7	12	42

* See note ‡ in Table 15.

† In Edmonton and Calgary there are other licensees with smaller volumes of business.

It is evident that the independent jobber offers little numerical opposition to larger operators and their many branches. Western Grocers Limited alone, with thirty branch houses in the three provinces, has more than all the independents combined, and of all wholesale fruit distributing units operating in Alberta, Saskatchewan and Manitoba, over 80 per cent are chain-jobber units.

Jobbers may be classified again into those which control retail outlets and those controlling no retail outlets. Both Western Grocers Limited and Macdonalds

Consolidated Limited have important retail connections. Western Grocers operate with a group known as Red and White Stores. Individually owned and operated, these shops have contracts with Western Grocers Limited which authorize and require certain marketing practices by these independent owners, set standards of conduct, and provide for the sale of special brands handled by Western Grocers Limited. In general, Western Grocers has a broad supervisory interest in the management and policies of these independently owned stores. In the three prairie provinces there are 675 Red and White Stores operating in conjunction with twelve Western Grocers' houses which act as supply depots. Most of these stores appear to do a very large percentage of their buying from Western Grocers' stocks.[4] Western Grocers, through its subsidiary, Dominion Fruit Limited, have a further retail connection through their investment in Shop Easy Stores, Limited, a corporation organized in 1936 which has twenty stores, of which fifteen are in Winnipeg. The purchase of this chain was undertaken in order to broaden the range of retail outlets for Western as well as to provide an adequate investment for Dominion Fruit's surplus cash. These major organizations thus have ceased to be purely jobber distributing agencies and have advanced another step in the distribution chain by controlling retail outlets.

Macdonalds Consolidated Limited is a subsidiary of Safeway Stores Limited. As a jobbing concern it serves not only the retail chain stores with which it is connected but also other independent retail stores. There are 140 Safeway units operating in Manitoba, Saskatchewan and Alberta. In addition there are the Piggly-Wiggly Stores, but Safeway's present policy is apparently to eliminate Piggly-Wiggly stores wherever these are located near Safeway units. The Safeway organization exercises a far-reaching influence on policies affecting the sale of fruits and vegetables in Western Canada, an influence which is strengthened by the importance of its subsidiary in their wholesale distribution.

Consolidated Fruit Company Limited does not control any retail stores. Through its parent company, Burns and Company, Limited, it is indirectly connected with a very active food store chain, the Jenkins Groceteria Company, Limited, of Calgary, which operates thirty-seven units throughout the province of Alberta, twenty-two of which are located in Calgary.

(*a*) *Development of the three Major Jobbing Companies*

Western Grocers Limited had its beginnings in The A. Macdonald Company Limited of Winnipeg, which was incorporated as a Dominion company on December 7, 1912. The name of the company was changed in July, 1918 The company developed rapidly, and by 1925 was wholesaling a great variety of "dry lines," and had begun to market fruits and vegetables. In 1929 the company purchased the well-established wholesale grocery firm of L. T. Newburn and Company, Limited, and Cameron and Heaps, Limited, the oldest wholesale grocery chain west of the Great Lakes. By 1930 Western Grocers had branch houses in thirteen cities and towns in the prairie provinces, one in British Columbia (Cranbrook) and four in Ontario (Fort Francis, Fort William, Kenora and Port Arthur). It also had organized its Red and White Store retail merchandising system.

In 1932 Western Grocers purchased the shares of Nash Simington Company, Limited, the largest distributors of fruits and vegetables in Western Canada. The purchase price was $969,878.13.[5] This was a cash transaction: no shares of Western Grocers Limited were given in payment. The acquisition of this company, with seventeen branches, at once placed Western

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[4] From material supplied by Western Grocers Limited (Exhibit 209).

[5] Twentieth Annual Financial Statement and Directors' Report, Western Grocers Limited, 1932 (part of Exhibit 205).

Grocers Limited in the forefront of wholesale fruit and vegetable marketing on the prairies. In the following year, 1933, Nash Simington Company, Limited, became Dominion Fruit Limited, an Alberta corporation with its shares wholly owned by Western Grocers Limited except for ten qualifying shares issued to the directors. Today Western Grocers Limited and Dominion Fruit Limited operate as distinct corporate entities but with their management and supervision vested in the same executives.

A controlling interest in H. H. Cooper, Limited, an Edmonton wholesale grocery and fruit establishment, was acquired in 1935, and in 1938 the company purchased the extensive business of W. H. Malkin Company, Limited, a wholesale grocery organization with headquarters in Vancouver and six branches, together with two subsidiaries, all operating mainly in the province of British Columbia. The purchase of the Malkin company, representing an investment of over a million dollars, was made "to obtain a greater diversity of territory, one which fundamentally was not dependent mainly on agriculture."[6]

Macdonalds Consolidated Limited.—Safeway Stores Limited entered the retail grocery field in Western Canada in 1929 with an aggressive low-price, cash-and-carry policy. In the same year it obtained control of Macdonalds Consolidated Limited, an old-established Winnipeg wholesale grocery house with branches throughout the prairie provinces.[7] Two wholesale units have since been acquired by Macdonalds Consolidated Limited: Provincial Produce Company of Winnipeg, in October, 1937, now operated as Continental Fruit Company; and H. G. Smith, Limited, of Regina, in November, 1938. At the end of 1938, Macdonalds operated forty-three branch houses and one wholly owned subsidiary in northwestern Ontario, Manitoba, Saskatchewan and Alberta. Of these, thirty were located in the three prairie provinces, but only eighteen branches sold fruit and vegetables.

Consolidated Fruit Limited.—Incorporated in 1926, Consolidated Fruit Limited was an amalgamation of several important wholesale grocery and fruit concerns in Western Canada. These were the P. Burns Company of Calgary, Limited (six branches), H. C. Stockton (three branches) and Scott Fruit Company, Limited (eight branches). Ten branch houses are now operated as National Fruit Company and nine as The Scott Fruit Company. Of these, three are in Manitoba, seven in Saskatchewan, seven in Alberta and two in British Columbia. The company also controls seven carbonated beverage plants in Western Canada. When originally formed, the majority of the common shares of Consolidated Fruit Company Limited were held by P. Burns, Limited, of Calgary, the large Western Canada meat packing organization, now Burns & Company, Limited. The Burns interests have continued their control of the common stock of Consolidated Fruit and hold all the preferred shares.

(b) *Quantities of Fruit and Vegetables Handled by Major and Independent Jobbers*

The division of fruit and vegetable business in Western Canada among the major jobbers, and between major jobbers and independents, is shown in the following series of tables of car receipts in the four largest cities. In Table 17, receipts of fruits and vegetables by the three major companies from all sources, domestic and foreign, are recorded; in Table 18, car receipts from British Columbia alone; and in Table 19, car receipts of major and independent jobbers from all sources.

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[6] Western Grocers Limited Annual Report (part of Exhibit 205).

[7] The original company was known as Macdonald-Cooper, Limited, organized on February 12, 1915. The company's name was changed in 1917 to Macdonald Consolidated, Limited. It was again changed in 1923 to MacDonald's Consolidated, Limited. The present title, since the 1929 incorporation, is Macdonalds Consolidated L'mited.

TABLE 17.—CARS OF FRUIT AND VEGETABLES RECEIVED FROM ALL SOURCES BY MAJOR JOBBERS IN FOUR PRAIRIE CITIES, 1936-1938*

City	1936			1937			1938		
	Western-Dominion	Consolidated	Macdonalds	Western-Dominion	Consolidated	Macdonalds	Western-Dominion	Consolidated	Macdonalds
Winnipeg	741	213	457	740	221	576	801	303	738
Regina	257	252	196	211	250	159	219	223	225
Edmonton	585	502	173	546	427	167	577	413	165
Calgary	296	315	231	282	299	195	236	352	218
Total	1,879	1,282	1,057	1,779	1,197	1,097	1,833	1,291	1,346

TABLE 18.—CARS OF FRUIT AND VEGETABLES RECEIVED FROM BRITISH COLUMBIA BY MAJOR JOBBERS IN FOUR PRAIRIE CITIES, 1936-1938*

City	1936			1937			1938		
	Western-Dominion	Consolidated	Macdonalds	Western-Dominion	Consolidated	Macdonalds	Western-Dominion	Consolidated	Macdonalds
Winnipeg	204	48	126	160	42	125	216	66	197
Regina	87	93	60	62	78	46	72	72	87
Edmonton	283	172	100	282	199	103	312	193	100
Calgary	140	147	104	139	136	86	120	166	111
Total	714	460	390	643	455	360	720	497	495

* Data compiled from statistical material supplied by Dominion Department of Agriculture (Fruit Inspectors) in Winnipeg, Regina, Edmonton, Calgary. (Exhibits 173, 178, 188, 194.).

TABLE 19.—CARS OF FRUIT AND VEGETABLES RECEIVED FROM ALL SOURCES BY MAJOR AND INDEPENDENT JOBBERS IN FOUR PRAIRIE CITIES, 1936–1938*

City	1936			1937			1938			Share of Major Jobbers, 3 year Average
	Ind.†	Major	Major	Ind.	Major	Major	Ind.	Major	Major	
	Cars	Cars	%	Cars	Cars	%	Cars	Cars	%	%
Winnipeg	1,133	1,411	55·5	1,019	1,537	60·1	111	1,842	72·2	62·6
Regina	137	705	83·7	239	620	72·1	132	667	83·5	79·7
Edmonton	21	1,260	98·4	50	1,140	95·8	19	1,155	98·4	97·5
Calgary	334	842	71·6	371	776	67·7	354	806	69·5	69·6
4 city average			72·2			70·8			78·6	73·8

* From material supplied by Dominion Department of Agriculture Fruit Inspectors. (Exhibits 173, 178, 188, 194).

† Including shipments to retailers direct, e.g., T. Eaton Company, Limited, but excluding shipments to brokers direct.

The percentages given in Table 19 show the domination of the market by the three major jobbers in the matter of tonnage received and sold in leading prairie cities. From a general four-city average of 72·2 per cent in 1936, the proportion handled by the three major wholesaling companies declined slightly to 70·8 in 1937, and rose to 78·6 in 1938. As between cities, in Winnipeg in 1936 and 1937 the major jobbers had a relatively smaller tonnage advantage over the independents. Relative receipts of the three large companies were higher at Calgary, and in Edmonton and Regina their margin was consistently overwhelming. The percentages noted in Table 19 are closely maintained in the narrower measure of British Columbia car receipts, shown in Table 20.

TABLE 20.—CARS OF FRUIT AND VEGETABLES RECEIVED FROM BRITISH COLUMBIA BY MAJOR AND INDEPENDENT JOBBERS IN FOUR PRAIRIE CITIES, 1936–1938*

City	1936			1937			1938			Share of Major Jobbers, 3 year City Average
	Ind.†	Major	Major	Ind.	Major	Major	Ind.	Major	Major	
	Cars	Cars	%	Cars	Cars	%	Cars	Cars	%	%
Winnipeg	330	378	53·4	242	327	57·5	251	479	65·6	59·0
Regina	70	240	77·4	84	186	68·9	60	231	79·4	75·4
Edmonton	19	555	96·7	42	584	93·3	17	605	97·3	95·7
Calgary	224	391	63·6	233	361	60·8	225	397	63·8	62·8
4 city average			70·9			70·8			75·7	72·5

*From material supplied by Dominion Department of Agriculture Fruit Inspectors (Exhibits 173, 178, 188, 194).

Fruit shipments from British Columbia to Manitoba, Saskatchewan and Alberta show a similar division. The following totals are for the crop years and represent shipments from the principal British Columbia fruit-growing areas (Okanagan, Creston, Nelson and Grand Forks):—

TABLE 21.—CARS OF FRUIT RECEIVED FROM BRITISH COLUMBIA BY MAJOR AND INDEPENDENT JOBBERS IN THE PRAIRIE PROVINCES, 1935-1938*

(From Okanagan, Creston, Nelson and Grand Forks)

Crop Year	Jobber	Cars received	Totals	Percentage of Total	Totals
1935-36	Western-Dominion	1,646		39·14	
	Consolidated Fruit	963		22·89	
	Macdonalds Consolidated	628	3,237	14·93	76·96
	Independents		969		23·04
	Total received by prairie jobbers		4,206		100·00
	Brokers		72		
	Total prairie receipts		4,278		
1936-37	Western-Dominion	1,491		39·73	
	Consolidated Fruit	865		23·05	
	Macdonalds Consolidated	558	2,914	14·87	77·65
	Independents		839		22·35
	Total received by prairie jobbers		3,753		100·00
	Brokers		134		
	Total prairie receipts		3,887		
1937-38	Western-Dominion	1,507		38·46	
	Consolidated Fruit	958		24·45	
	Macdonalds Consolidated	657	3,122	16·77	79·68
	Independents		796		20·32
	Total received by prairie jobbers		3,918		100·00
	Brokers		168		
	Relief cars		182		
	Total prairie receipts		4,268		

* Compiled from statistical material supplied by British Columbia Fruit Board, Kelowna, B.C. (Exhibit 137).

The pre-eminent position of the major jobbers in fruit distribution is evident. Equally clear is the important place of Western-Dominion purchases in relation to all British Columbia fruit shipped to the prairie markets. It is difficult, however, to compare these fruit percentages with all British Columbia car receipts, because the figures in Tables 18 and 20 are for calendar years while those in Table 21 are for the crop years. The above records, despite such limitations, provide a fair picture of the comparative position of jobbers in almost every prairie market. They show how effectively the market is dominated by the three major jobbing companies.

In the Okanagan Valley, shipping facilities have similarly been dominated by three major groups: Associated Growers of British Columbia, Sales Service Limited, and the "Foursome".[8] The relative tonnages of fruit shipped by these groups and by other smaller shipping concerns are shown in the next table, together with the particular jobbing houses or markets to which shipments were made.

TABLE 22.—CARS OF FRUIT SHIPPED BY BRITISH COLUMBIA GROUPS TO MAJOR JOBBERS IN THE PRAIRIE PROVINCES AND TO OTHER CANADIAN JOBBERS, 1935–1938*

(From Okanagan, Creston, Nelson and Grand Forks)

Shipper	Western Grocers-Dominion Fruit		Consolidated Fruit		Macdonalds Consolidated		Other jobbers (British Columbia, Eastern Canada and Prairies)		Total	
	cars	%	cars	%	cars	%	cars	%	cars	%
1935-36—										
Associated	572	34·75	572	59·40	79	12·58	774	40·87	1,997	38·92
Sales Service	545	33·11	41	4·25	46	7·33	213	11·24	845	16·47
Foursome	149	9·05	140	14·54	428	68·15	263	13·89	980	19·10
All others	380	23·09	210	21·81	75	11·94	644	34·00	1,309	25·51
	1,643	100·00	963	100·00	628	100·00	1,894	100·00	5,131	100·00
1936-37—										
Associated	510	34·20	613	70·87	10	1·79	637	34·51	1,770	37·18
Sales Service	581	38·97	73	8·44	7	1·25	250	13·54	911	19·14
Foursome	90	6·04	24	2·77	507	90·86	330	17·88	951	19·98
All others	310	20·79	155	17·92	34	6·10	629	34·07	1,128	23·70
	1,491	100·00	865	100·00	558	100·00	1,846	100·00	4,760	100·00
1937-38—										
Associated	591	39·22	729	76·10	66	10·04	812	34·06	2,198	39·92
Sales Service	582	38·62	72	7·52	33	5·02	343	14·39	1,030	18·70
Foursome	85	5·64	45	4·70	540	82·20	437	18·33	1,107	20·11
All others	249	16·52	112	11·68	18	2·74	792	33·22	1,171	21·27
	1,507	100·00	958	100·00	657	100·00	2,384	100·00	5,506	100·00

* Compiled from material supplied by B.C. Fruit Board (Exhibit 137).

(c) *Fruit and Vegetable Jobbers Associations*

The Canadian Fruit and Vegetable Jobbers Association, formed in 1931, had its origin in the Eastern Canada Fruit and Vegetable Jobbers Association which was organized in 1925. The name of the organization was changed again in July, 1938, to the Canadian Fruit Wholesalers Association. This Association holds

[8] As already noted, this is a group of the following four independent shippers who have worked out certain measures of co-operation amongst themselves: B. C. Fruit Shippers, Limited, B. C. Orchards, Limited, McLean & Fitzpatrick, Limited, and Occidental Fruit Company Limited.

annual winter and summer meetings and concerns itself with questions of common interest to all jobbers, such as dump duties, general tariff questions, transportation problems—including uniform freight rates, claims adjustments, refrigeration, carriers' protective service—labour problems, cartage, trucking competition and business costs. Through its own efforts and as a member of the Canadian Horticultural Council, it has exercised a considerable influence on legislative and administrative action with regard to fruit and vegetables, particularly regarding tariffs and dumping duties. Almost all legislation sponsored by the Canadian Horticultural Council is scrutinized carefully by the Jobbers Association.

Another type of fruit jobber organization is that of the local wholesaler meetings in the five major prairie cities (Calgary, Edmonton, Saskatoon, Winnipeg and Regina). Local prices, competition, joint action in importing certain commodities and in sharing domestic products of which there is a shortage, are discussed at these local meetings.

4. Price Spreads between Producer and Consumer

The small amount which the grower receives from the dollar paid by the consumer for fruits and vegetables has always been a subject of complaint by producers. Consumers feel they also have just cause for complaint because retail prices appear at times to have no proper relation to basic costs of the products at their sources. The development of co-operative organizations has to some extent provided producers with a means of influencing prices in their favour. Consumers are for the most part unorganized and inarticulate; their ability to affect prices is chiefly dependent upon their ability or willingness to do without the particular product or to use substitutes. Full information as to comparative prices and qualities is not always available to consumers. It is impossible to say exactly what has been paid and what should be paid to each factor in the distribution process—to packers, shippers, transportation agencies, brokers, wholesalers and retailers. Certain general information, however, which can be recorded to advantage, has been secured in this inquiry.

Packing, Shipping and Selling Charges.—The first assessments against a box of apples are the packing, shipping and selling charges. Certain standard rates, as indicated below, are charged with more or less uniformity by independent shippers throughout the Okanagan Valley, and are embodied in the regular grower-shipper contracts:[9]

Apples and pears, wrapped, domestic	$ .55	per standard box
Apples and pears, wrapped, export	.60	per standard box
Apples, household	.40	per standard box
Apples, bulk, graded	8.50	per ton
Apples, bulk, ungraded	6.00	per ton
Crabapples	.40	per standard box
Apricots and plums	.38	per basket crate
Prunes, plums, and apricots	·25	per suitcase
Peaches	.35	per standard box
Cherries	·55	per 4-basket crate
Cherries	.50	per Eastern lug
Cherries	.55	per standard lug

One independent shipping house charges 58 cents for its export wrapped apples and pears and 53 cents for its domestic wrapped, and 42 cents for its household, while another charges 55 cents for its export wrapped, 15 cents being designated as selling cost and 40 cents as a specific packing assessment.[10]

[9] Figures taken from grower contract of Browne Company Limited, Penticton, B.C. (part of Exhibit 128).
[10] Data supplied by British Columbia Fruit Shippers Limited, Vernon, B.C. (part of Exhibit 132).

A different method of assessing packing and selling costs has been developed by co-operative packing and shipping plants. As indicating the various items entering into a co-operative's charge for packing a box of apples, the following figures for the 1937-1938 crop year are quoted from data supplied by the Kelowna Growers' Exchange:

	Medium Wrapped Cents	Household Cents
Field Service	.50	.50
Box	14.85	14.85
Box making	.90	.90
Nails	.55	.55
Receiving	1.25	1.25
Dumping	.25	.25
Sorting	2.00	2.00
Packing	4.25	2.25
Wraps	5.50	....
Lidding	.60	.60
Label	.28	.28
Labelling	.22	.22
Liner	.50	....
Checking	.20	.20
Trucking to grader	.20	.20
Loading, including trucking and grading	1.10	1.10
Packing supervision	1.00	1.00
Cost	34.15	26.15
Charge	34.00	26.00
Overhead	10.00	10.00
Total	44.00	36.00
Charges rebated	6.70	6.70
Net Packing and Handling Cost	37.30	29.30

(Exhibit 131)

A levy of 1·25 cents per box to cover administrative costs, advertising, etc., is imposed by the British Columbia Fruit Board. This charge is paid by the shipper and deducted from his returns to the producer.

Freight and in transit protection.—Freight rates from the Okanagan Valley to the prairie markets have long been a subject of debate between producers and railroads. The low basic freight rate of 1915 was sharply raised in 1918 and again in 1922. Today these rates are considered out of proportion to the value of the product and very high when compared with corresponding rates from the American Northwest to Chicago and other eastern markets.

TABLE 23.—FREIGHT RATES FROM KELOWNA, B.C., TO 5 PRAIRIE CITIES

(per hundred pounds)

Destination	Period	Fresh Fruits, Cherries, Peaches, etc.	Apples		Vegetables
		$ cts.	$ cts.		$ cts.
Kelowna to Calgary	(1915)	0 85	0 58		0 33
	(1918)	1 06½	0 72½		0 41½
	(1922)	1 04	0 71		0 42
Kelowna to Edmonton	(1915)	0 99	0 67		0 41
	(1918)	1 24	0 84		0 51½
	(1922)	1 41	0 95		0 56
Kelowna to Saskatoon	(1915)	1 00	0 75		0 48
	(1918)	1 25	0 94		0 60
	(1922)	1 50	1 13	1 00*	0 65
Kelowna to Regina	(1915)	1 00	0 75		0 48
	(1918)	1 25	0 94		0 60
	(1922)	1 50	1 13	1 00*	0 66
Kelowna to Winnipeg	(1915)	1 00	0 75		0 53
	(1918)	1 25	0 94		0 66½
	(1922)	1 50	1 13	1 00*	0 74

* Lower emergency rates, applicable from February 14 to June 15, 1938, and from December 12, 1938, to June 30, 1939.

During the period October 15 to March 31, apple shipments are subject to an additional charge for heating of 1·5 cents per car per mile, which amounts to approximately 2 cents per hundred pounds from Kelowna to Calgary, 2·6 cents to Edmonton, 4 cents to Saskatoon, 4 cents to Regina and 6 cents to Winnipeg. During the autumn and spring months, when heaters are not used, there is a charge of from ½ to 1½ cents per box for lining the cars with paper. Freight costs on a box of apples (50 pounds gross weight) shipped from Kelowna during the 1937-38 crop year would be as follows:—

Destination	July 15 to Oct. 15 Cents	Oct. 16 to Dec. 11 Cents	Dec. 12 to April 1 Cents
Calgary	35·5	36·5	36·5
Edmonton	47·5	49·0	49·0
Saskatoon	56·5	58·5	52·0
Regina	56·5	58·5	52·0
Winnipeg	56·5	59·5	53·0

The gross weight of a box of apples is from 48 to 53 pounds, depending upon variety and whether wrapped or unwrapped.

Brokerage.—A charge of $20 per car of apples (approximately 3 cents per box) is made by the prairie broker for his services in placing orders, adjusting claims, informing the shipper as to market conditions, etc. This charge is borne by the shipper and included in his flat charge for packing, shipping and selling.

Jobber margins.—It has been found impossible to arrive at figures which would accurately represent, in cents per box, the gross margins secured by jobbers and retailers and therefore these margins will be shown as percentages of sales. Jobber margins in the sale of apples vary within each city. The following extracts from records of two of the largest jobbing firms indicate gross margins on apple sales secured by different branches during the year ending December 31, 1938:[11]

Consolidated Fruit, Calgary (Head Office)	11·5% of sales
Scott Fruit, Calgary (Consolidated Fruit)	10·7% " "
Scott Fruit, Regina (Consolidated Fruit)	10·6% " "
S. & M. Wholesale, Regina (Western Grocers)	9·2% " "

[11] Compiled from material supplied by these two major jobbing companies (Exhibits 169, 184, 191 and 193).

These figures are inadequate as illustrations of jobber margins on apples. They serve, however, to indicate the variations in the margins of the various jobbing houses and may be compared with the gross margins secured by jobbers throughout Canada on all fruits and vegetables, as estimated by the Dominion Bureau of Statistics for the year 1936:—

Maritimes	13·5% of sales
Quebec	9·5% " "
Ontario	11·0% " "
Prairies	11·3% " "
British Columbia	14·1% " "
Canada	11·2% " "

Retailer margins.—No attempt has been made to estimate the average margin secured by prairie retailers. Selling prices, advertised in Winnipeg by a well-known chain store system for the fourth week of each of the four last months in 1938, have been obtained. A comparison of these prices with the list prices of the chain's wholesale supply house indicates that the following gross margins were secured on sales of McIntosh apples, face and fill, during the periods in question:—

	By the case % of sales	By the pound % of sales
4th week September, 1938	20·7	25·0
4th week October, 1938	22·7	27·5
4th week November, 1938	18·9	25·0
4th week December, 1938	18·9	25·0

As this organization operates a network of branches covering the three prairie provinces with a centralized selling policy, it may be assumed that these margins are fairly typical of those secured by prairie retailers generally.

The number of retail food stores in the four western provinces in 1930, as recorded in the census of Canada of 1931, was approximately 9,500. The increase since 1930 has been estimated at 20 per cent, bringing the number in 1939 to well over 11,000.[13] Of these stores it is said that over 30 per cent are associated in corporate or voluntary chains.

Distribution of Consumer's Dollar.—It is, of course, impossible to trace a given box of apples from the producer's orchard to the consumer's house. Apples from many orchards are pooled with the shipper, sold to different jobbers in different markets over a period of several months at varying prices and the net proceeds divided pro rata among the pool members at the close of the selling season. It is possible to estimate, however, with a reasonable degree of accuracy the net return to the producer from any particular sale and the distribution of the spread between such return and the cost to the consumer.

The examples given in the following table are based on actual wholesale and retail prices on the dates indicated. It has been assumed that the shippers' charges for packing, shipping and selling were those set out on page 33, and that the jobber was allowed a quantity discount of 3 cents per box ($20 per car). No allowance has been made for shrinkage or deterioration.

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[13] From material supplied by Retail Merchants' Association of Canada, Manitoba Provincial Board (Exhibit 196). Retail food outlets by provinces were as follows in 1931:

	Man.	Sask.	Alta.	B.C.
Fruit and vegetable stores	48	31	49	192
Grocery stores	919	725	713	1,303
Combination food stores	313	118	129	96
Meat stores with grocery department	95	46	56	62
General stores with food department	848	1,629	1,189	798
Department stores with food department	21	20	34	25
	2,244	2,569	2,170	2,476

TABLE 24.—EXAMPLES OF ESTIMATED DISTRIBUTION OF THE CONSUMER'S DOLLAR, PER BOX OF APPLES, WINNIPEG, REGINA AND EDMONTON, 1938-1939

	Winnipeg												Regina			Edmonton	
	McIntosh Ex. Fcy. 21–3–38	Newton Fcy. 21–3–38	Rome B F & F 21–3–38	Wealthy F & F 12–9–38	McIntosh F & F 24–10–38	W. Banana F & F 24–10–38	McIntosh Fcy. 5–12–38	Delicious Fcy. 5–12–38	Spy F & F 2–1–39	McIntosh Tiered 16–1–39	Wagner F & F 23–1–39	Rome B F & F 20–2–39	McIntosh Ex. Fcy. 20–2–39	McIntosh F & F 4–12–38	Spy F & F 4–12–38	McIntosh Fcy. 6–12–38	Delicious F & F 5–12–38
Dollars per Box	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$	$
Grower	·408	·826	·158	·258	·358	·258	·558	·608	·308	·308	·358	·458	·658	·358	·258	·558	·358
B.C. F.B. Levy	·012	·012	·012	·012	·012	·012	·012	·012	·012	·012	·012	·012	·012	·012	·012	·012	·012
Packing, Shipping and Selling	·520	·520	·370	·370	·370	·370	·520	·520	·370	·370	·370	·370	·520	·370	·370	·520	·370
Brokerage	·030	·030	·030	·030	·030	·030	·030	·030	·030	·030	·030	·030	·030	·030	·030	·030	·030
Freight and Protection	·542	·542	·532	·558	·558	·558	·578	·565	·543	·530	·533	·533	·543	·570	·570	·480	·480
Jobber's margin	·188	·220	·298	·122	·122	·172	·302	·265	·237	·200	·197	·147	·137	·160	·110	·300	·200
Retailer's margin	·450	·350	·490	·300	·440	·490	·250	·250	·150	·210	·160	·450	·600	·160	·290	·200	·150
Cost to consumer	2·15	2·50*	1·89	1·65	1·89	1·89	2·25	2·25	1·65	1·66*	1·66*	2·00*	2·50*	1·66*	1·64	2·10	1·60
Percentages of Retail Price	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Grower	18·97	33·04	8·36	15·64	18·94	13·64	24·80	27·02	18·67	18·55	21·56	22·90	26·32	21·56	15·73	26·57	22·38
B.C. F.B. Levy	0·56	0·48	0·64	0·73	0·64	0·64	0·54	0·54	0·73	0·72	0·72	0·60	0·48	0·72	0·73	0·57	0·75
Packing, Shipping and Selling	24·17	20·80	19·58	22·42	19·58	19·58	23·11	23·11	22·42	22·29	22·29	18·50	20·80	22·29	22·57	24·76	23·12
Brokerage	1·38	1·20	1·59	1·82	1·59	1·59	1·33	1·33	1·82	1·81	1·81	1·50	1·20	1·81	1·82	1·43	1·87
Freight and Protection	25·25	21·68	28·15	33·82	29·52	29·52	25·69	25·11	32·91	31·93	32·11	26·65	21·72	34·34	34·76	22·86	30·00
Jobber's margin	8·74	8·80	15·75	7·39	6·45	9·10	13·42	11·78	14·36	12·05	11·87	7·35	5·48	9·64	6·71	14·29	12·50
Retailer's margin	20·93	14·00*	25·93	18·18	23·28	25·93	11·11	11·11	9·09	12·65*	9·64*	22·50*	24·00*	9·64*	7·68	9·52	9·38
Cost to consumer	100·00	100·00	100·00	100·00	100·00	100·00	100·00	100·00	100·00	100·00	100·00	100·00	100·00	100·00	100·00	100·00	100·00

* Retail selling price by the pound based on 40 pounds net weight per box—others by the box.

The course of fruit production and marketing in British Columbia has been following a significant pattern of development. The inability of growers and shippers to achieve maximum distribution at satisfactory prices drove them toward governmental intervention. The Interior Committee of Direction, the 1932 Apple Cartel, the Okanagan Stabilization Board, the British Columbia Fruit Board, B. C. Tree Fruits Limited with its "one-desk" plan, and now the demand for "central selling," have all been part of one continuous process, which set out to subject the industry to a degree of control which would minimize the risks of selling a perishable commodity. It was thus intended to balance the bargaining power of the producer against the increasing strength of the distributor-purchaser.

It becomes apparent, then, that in the production and distribution of fruits and vegetables in Western Canada a dual movement has developed: on the one hand the creation of governmental supervision of production and marketing which has given to that part of the industry the character of a quasi-publicly operated monopoly, and on the other the rise of three organizations whose branch houses and total tonnage almost completely dominate the distribution of fruits and vegetables on the prairies. To this parallel development must be added the increasing control by two of these major jobbers over retail outlets and the effect of such control upon the reduction of the number of independently owned channels through which fruits and vegetables may reach the general public.

It is not the object of this report to attempt an estimate of the economic validity of certain marketing or distributing methods now in force in British Columbia and on the prairies. But it is against this background of quasi-public monopoly in British Columbia on the one hand, and amalgamation on the prairies on the other, that the charge of an alleged combine in the distribution of fruits and vegetables has been made. And it is against this background that these allegations, with all the facts and issues that must be analysed to discover whether or not a combine has operated or is likely to operate to the detriment or against the interest of the public, can best be apprehended.

III. THE ALLEGED COMBINE OF JOBBERS AND SHIPPERS

Any measure of control which jobbers may exercise over shippers or brokers becomes a matter which the fruit growers of British Columbia are likely to suspect as being against their interests. Shippers and brokers are agents of the growers. The growers' products are placed in their hands and they are entrusted with the responsibility of selling these products at prices which will give the best possible returns to the growers. If the selling agent (the shipper) is in any way controlled by the buyer (the jobber), the interests of the growers will not be as well served as if there were no such relationship. Such control by jobbers over brokers was found to exist in the investigation made under the Combines Investigation Act in 1924 and 1925, and the relationship was condemned by the courts in the convictions registered in 1926. The one monopolistic jobbing concern of that day had secured ownership and control of a chain of brokerage houses in the western provinces, through which houses practically all the growers' products were sold.

In the present inquiry it is control of shipping agencies, not of brokerage houses, which has been alleged. In 1936 Western Grocers Limited, one of the three major fruit jobbing companies in the prairie provinces, bought a fifty per cent interest in a company controlling one of the three major shipping groups of the Okanagan Valley. The relationship was secretly established and maintained, and growers using these shipping agents are said to have known nothing of it until it was disclosed at a public meeting in Vernon, B.C., two months before application for the present investigation was filed.

The actual purchase of shares was made in the name of Dominion Fruit Limited, an Alberta corporation which is a wholly-owned subsidiary of Western Grocers Company. The investment was made in Lander Company Limited, a fruit shipping organization in Vernon, British Columbia. Lander Company Limited has a controlling interest in Sales Service Limited, a fruit selling agency in Kelowna, British Columbia, and in several fruit shipping companies in the Okanagan Valley which sell through Sales Service Limited. It has been claimed that this investment, apart from its alleged intrinsic unlawfulness because of its jobber-shipper relationship, has resulted in many undesirable business practices on the part of fruit and vegetable shippers and jobbers.

1. Lander Company Limited and Sales Service Limited prior to 1936

Sales Service Limited was organized in 1926 to operate for independent shipping agencies as Associated Growers of British Columbia was operating for its many locals. Shares in Sales Service were purchased by fruit shipping houses such as Occidental Fruit, Limited, Okanagan Packers, Limited, B. C. Orchards, Limited, Federated Orchards, Limited, E. C. Skinner, Limited, and Unity Fruit, Limited. Shortly afterwards Federated Orchards and E. C. Skinner, Limited, discontinued business. In 1928 Sales Service Limited aided in the organization of the Mutual Company in Penticton, the name of which was changed later to Browne Company, Limited. Occidental Fruit, Limited, and B. C. Orchards, Limited, withdrew within a few years, and their shares were bought by Lander Company Limited. Meanwhile, Sales Service Limited secured other fruit packing companies as shipping clients but no corporate relationship was effected with them.

At the time of this inquiry Sales Service Limited had corporate connections with the following Valley shipping organizations:

Browne-Lander, Limited, Vernon, B.C.
Browne Company, Limited, Penticton, B.C.
The Cascade Fruit Company, Limited, Kelowna, B.C.
Keremeos Fruits, Limited, Keremeos, B.C.

Other shipping houses availing themselves of Sales Service's shipping agency facilities, and in some cases owning a minor number of shares of its stock, were:

	No. of shares of Sales Service stock
Haynes Co-operative Growers Exchange, Oliver, B.C.	—
Walters, Limited, Summerland and Peachland, B.C.	15
Greata Ranch, Limited, Peachland, B.C.	3
The Crown Fruit Company, Limited, Kelowna, B.C.	—
Apex Orchard Company, Limited, Kelowna, B.C.	1
Highland Fruits, Limited, Kelowna, B.C.	—
Okanagan Valley Land Company, Limited, Okanagan Centre, B.C.	—
J. W. Hughes, Kelowna, B.C.	—
Unity Fruit, Limited, Vernon, B.C.	6

The growth of Sales Service Limited had been accompanied by a change in the character of its membership and corporate relations. The company had begun as an agency for facilitating the pooling of products in order to obtain selected grades and varieties for independent shippers, and also to provide a central selling organization. Sales Service was formed at a period when the co-operative movement in the Okanagan Valley had begun to decline and when that decline was paralleled by the rise of independent shippers.

Mr. R. B. Staples up to the time of this investigation has been the head of Sales Service Limited. He had been a fruit grower and manager of a co-operative shipping house in Creston from 1911 to 1920. In 1920 he organized a shipping house in Creston, the Staples Fruit Company, Limited. The company was owned by Nash Simington Company Limited, then the largest wholesale distributors of fruit and vegetables in Western Canada. In 1923 Mr. Staples managed the Kootenay crops for the Associated Growers, after their large-scale purchases of independent shipping plants in the Okanagan. Between 1924 and 1925 he managed an independent grower organization known as Creston Growers Limited, and in 1926 he supervised certain Nash properties in the United States and acted as buyer in the Okanagan for the Canadian Nash organization. Finally in 1927 he was appointed manager of Sales Service Limited, after having applied for that position in 1926.

Lander Company Limited was organized by R. B. Staples in 1928, with an authorized capital of 20,000 one-dollar shares, as a fruit shipping establishment with offices in Vernon. A. C. Lander, a former employee of the Nash Simington company, who had managed the Mitchell Fruit Company in Calgary and also had seen service with Mutual Brokers of Calgary, was appointed manager. Until he came to Vernon to manage the newly formed Lander Company Limited, Lander's entire experience in the fruit industry had been obtained in the service of the Nash organization. The Lander company took over the business of E. C. Skinner, Limited, an established shipping organization in Vernon.

The original shareholders in Lander Company Limited were R. B. Staples and A. C. Lander, who had 3,001 shares each out of a total of 6,003 shares issued.[1] In 1929 the share issue was increased to 15,528, with 7,476 assigned

[1] Annual Report, Companies Act (B.C.), Lander Company Limited, February 2, 1929 (part of Exhibit 1c.). One share was held by Wilhelmina Howarth, stenographer. The authorized capital was $20,000, to consist of 20,000 shares at $1.00 each.

to R. B. Staples, 7,476 to A. C. Lander and the remainder, 576, to J. H. Reader, treasurer of the company. No further stock changes were made until 1933, when the number of ordinary shares was increased to 18,372, distributed as follows: R. B. Staples and A. C. Lander, 7,326 each; J. H. Reader, 326; H. Jeffrey of Portage la Prairie, 970; and the Finch Investment Company, Minneapolis, Minnesota, 2,424. The Finch Investment Company appears to have been part of the inter-corporate organization which included the Nash Shareholders Company and the Nash-Finch Company, both of North Dakota. Until 1932 the latter company controlled Nash Simington Company, Limited, with head offices in Winnipeg. In 1935 the Jeffrey shares were transferred to Mrs. Mildred Lander, wife of J. B. Lander, a member of the staff of the C. H. Robinson Company Limited in Regina. The C. H. Robinson Company had already passed under the control of the Nash-Finch Company of North Dakota.

As several of the original shareholders in Sales Service withdrew from the organization after 1928 their stock was taken over by the new Lander company. At the same time the Lander company made advances to other shipping members of the Sales Service group, and acquired their shares. By 1935 Lander Company Limited held shares in Sales Service Limited, Browne Company, Limited, and the Cascade Fruit Company, Limited, valued at $17,641. These holdings were increased in 1937 by the addition of $3,500 in shares of Keremos Fruits, Limited. In the same year Lander Company Limited sold its merchandise and equipment to a new company, Browne-Lander Limited, of Vernon, with the Lander company retaining in the new company a three-quarter interest amounting to $12,000. Consequently the Lander company ceased to be a merchandising company and became purely a holding company through which control was exercised over its various investments. Owing to these various changes A. C. Lander became more interested in the allied companies and by 1935 he was giving more attention to Sales Service Limited which he has managed until recently, subject to Mr. Staples' supervision.

The records show Lander Company Limited as owner of a substantial or controlling interest in the following organizations:[2]

	Total stock issued	Lander Company holding
Sales Service, Limited..	114	58
Browne-Lander, Limited..	16,000	11,198
J. B. Lander, Limited (formerly Sales Service (Vancouver), Limited)..	998	548
The Cascade Fruit Company, Limited..	24,816	12,406
Browne Company, Limited..	10,548	5,274
Keremeos Fruits, Limited..	7,000	3,498

Lander Company Limited thus is seen to have an effective or controlling interest in these seven British Columbia fruit selling and shipping organizations.

2. Investment by Dominion Fruit Limited in Lander Company Limited in 1936

Extensive transfers of shares appear in the Lander company's records in 1936. Two blocks, totalling 5,466 shares, were deducted from the holdings of R. B. Staples and A. C. Lander, 2,733 from each, and were transferred to R. B. Staples in trust. To this was added a further 970 shares transferred in trust from the total holdings of Mrs. Mildred Lander. The 326 remaining Reader shares were divided by transferring 140 to R. B. Staples in trust and the balance, 186, to Alexander McCallum, Winnipeg, c/o Western Grocers Limited. Finally the 2,424 Finch Investment Company shares were transferred to R. B. Staples in trust. When the process was finished R. B. Staples and

[2] Annual reports under Companies Act (B.C.) (Exhibit 1c).

A. C. Lander held between them 9,186 shares, one-half of the total issue, and the other 9,186 shares were held as follows: R. B. Staples in trust, 9,000, Alexander McCallum, 186 shares.[3] No further share transfers or other changes were made in 1937 and 1938.

It has been confirmed in the present inquiry that the 9,000 shares registered in Mr. Staples' name in trust were held by him on behalf of Dominion Fruit Limited, and that the latter company purchased the shares for cash through the Lander Company Limited, from Staples, Lander, Mrs. Mildred Lander, J. H. Reader, and the Finch Investment Company. The share certificates registered in the name of R. B. Staples in Trust were endorsed by Staples and delivered to Dominion Fruit Limited (Evidence, p. 1530). The 186 shares held by Alexander McCallum and registered in his name were in reality Dominion Fruit Limited shares. When W. P. Riley, president of Western Grocers Limited and of Dominion Fruit Limited, was asked if McCallum had put up money for his own shares, he replied, "No, they are Dominion Fruit shares." He added that the Dominion Fruit Company provided the money for the purchase of the McCallum shares and took an endorsement on the certificate (Evidence, p. 4153). Dominion Fruit Limited, therefore, had effective control of one-half of the shares of Lander Company Limited, the other half being controlled by Staples and Lander.

Through this stock Western Grocers Limited, as owners of Dominion Fruit Limited, secured virtual control of the Lander company to the extent that, although Staples and Lander held a fifty per cent interest in the company, no major policies would be formulated and put into effect by the Lander Company without reference by its directors to the wishes of Dominion Fruit Limited. In effect, the investment resulted in giving Western Grocers Limited a close contact with the supplies of thirteen Okanagan fruit shippers handling almost twenty per cent of the fruit production of the Okanagan Valley and adjacent areas, as well as a measure of control over one of the important independent selling agencies. To this corporate connection must be added the control by Western Grocers Limited of thirty branch wholesale fruit houses in the three prairie provinces, handling almost forty per cent of the Okanagan fruit distribution on the prairies from 1935 to 1938, and the Western Grocers Limited connection with retail stores in the three provinces.

The relationship which developed between Western Grocers Limited and Sales Service Limited was in large part due to the connections which officers of both these companies had had with the Nash Simington company. R. B. Staples and A. C. Lander, the heads of the Sales Service organization, had gained much of their experience in the fruit industry as employees of the Nash company. They were well known to the managers operating Nash branch houses on the prairies. These managers were taken over by Western Grocers Limited when it purchased the Nash fruit houses in 1932, and their business contacts with Staples and Lander naturally continued. Most important of these contacts was that with Alexander McCallum, now superintendent of Dominion Fruit Limited and one of its directors. McCallum had been with the Nash organization from 1910 until the change in 1932, and from 1930 to 1932 he had been supervisor of all the Nash fruit branches. The Nash houses had looked to Sales Service as one of their principal sources of supply and Sales Service had looked to Nash as its principal outlet. The importance of that outlet in the years following the purchase by Western Grocers is indicated in the following table:

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[3] Annual Report, Companies Act (B.C.), June 16, 1937, Lander Company Limited (part of Exhibit 1c).

TABLE 25.—SHIPMENTS OF FRUIT BY SALES SERVICE LIMITED TO WESTERN GROCERS LIMITED—DOMINION FRUIT LIMITED, AND TO OTHER JOBBERS IN THE PRAIRIE PROVINCES, 1934–1938*

(by cars)

Crop Year	Sales Service shipments to Western Grocers—Dominion Fruit	Total Sales Service shipments to Prairies	Western Grocers—Dominion Fruit percentages
1934–35	751	831	90·37
1935–36	493	729	67·62
1936–37	585	745	78·52
1937–38	612	784	78·06

*Compiled from material supplied by Sales Service Limited (Exhibit 125). Includes shipments from areas outside the jurisdiction of the British Columbia Fruit Board.

Another link between Sales Service and Western Grocers was the brokerage firm of C. H. Robinson Company Limited, which was organized in 1927, the same year in which R. B. Staples assumed the management of Sales Service Limited. All the C. H. Robinson employees and shareholders until 1932 had been employees of Mutual Brokers, the Nash-owned brokerage agency. The Regina office was managed by J. B. Lander, brother of A. C. Lander, who later joined the Sales Service organization in Kelowna. Sales Service not unnaturally employed the C. H. Robinson company as its prairie brokers.

Within a year after the purchase of the Nash houses by Western Grocers, R. B. Staples made overtures to the company, offering special discounts on cars purchased by Western. In 1933 a meeting was held in Winnipeg, attended by R. B. Staples, E. J. Chambers, president of Associated Growers, H. C. Stockton of Consolidated Fruit Company Limited, W. P. Riley, president of Western Grocers Limited, and M. V. McGuire, an Okanagan Valley shipper who was then manager of the 1932-33 Apple Cartel. In his evidence Major McGuire stated that the purpose of this meeting had been to make arrangements with jobbers which would enable the apple crop to be moved more quickly. It was argued that a discount to jobbers would be an inducement to them to purchase British Columbia products, and would facilitate the sale of the crop by shippers pressed with slow-moving tonnages. At this meeting it was decided to urge Macdonalds Consolidated Limited to request similar discounts from Okanagan shippers. Macdonalds refused and the matter was dropped.

This 1933 meeting marks the first of a series of negotiations in which Staples, Chambers, Riley and Stockton took part concerning the payment of discounts upon cars sold by Sales Service and Associated Growers to the Western Grocers-Dominion Fruit and Consolidated Fruit branches. It reveals, too, how closely the president of Associated Growers worked with R. B. Staples of Sales Service Limited. Further, it establishes the early refusal of Macdonalds Consolidated to participate in such transactions. And, finally, it demonstrates the attitudes of the prairie jobber and the British Columbia shipper which persisted even after the disappearance of the Nash organization: the jobbers continued to expect concessions, in this case a special cash discount, apart from the normal profit upon their British Columbia purchases made at more or less competitive prices.

The reappearance in 1932 of the practice of jobbers buying for cash in the Okanagan may have had some influence in encouraging Sales Service and Associated Growers to offer special concessions to prairie jobbers. It may also have suggested to Sales Service the idea of a jobber investment in the Lander

company. The co-operative movement and the prevailing grower opposition to direct jobber representation in the Valley had discouraged the purchasing of fruit for cash directly from the producer, and after 1923 there was little cash buying. Consolidated Fruit Company Limited sent a cash buyer to the Valley to purchase on its behalf in the 1932-33 season, but growers generally felt so strongly about the venture that the buyer was compelled to leave the Okanagan. At the same time Consolidated Fruit had financed the establishment of a shipping house in Vernon, Crestland Fruit Company, Limited, and was supervising it through a former Consolidated Fruit employee, Harvey Harrison. It appears that this was one of the first attempts of a prairie jobber to secure direct control of a shipping house since the Nash investments in shipping organizations of 1918 to 1925. These developments influenced Staples in his attitude toward Western Grocers Limited. For if Consolidated Fruit could manage to have its own buyer in the Valley and operate through a shipping house financed by itself, certainly Western Grocers, as a larger factor in the trade, could and might do the same. There was need, therefore, to forestall any such action by Western Grocers Limited in the Okanagan Valley.[4]

The advantages to the Consolidated Fruit Company of direct purchases in the Valley, particularly in the case of vegetables, helped to prompt the arrangements made in 1934 by Sales Service and Lander Company Limited for a series of special discounts and for the elimination of the broker in Sales Service shipments to Western Grocers Limited or Dominion Fruit Limited. In this way the Western Grocers company benefited by the discount as well as by the elimination of brokerage for the 1934-35 crop. Specific instructions to pay such discounts to the head office of Western Grocers, and not to the branches, were given by Sales Service to its members. No discount was paid by Sales Service and its members in the 1935-36 season, owing to restrictions imposed by the British Columbia Tree Fruit Board, which commenced operations in 1934 under the Dominion Natural Products Marketing Act. Western Grocers Limited, however, did receive $3,729 in 1935 from Associated Growers as special discounts paid directly to head office.

From November, 1934, until the spring of 1936 a considerable degree of administrative control over the British Columbia interior fruit crop was effected through the British Columbia Tree Fruit Scheme operated under the federal Natural Products Marketing Act. Once this legislation was referred to the Supreme Court of Canada, important Valley shippers doubted if much control would be left. R. B. Staples was of this view and, having special relations with Western Grocers Limited, he believed it advisable to approach Western with a view to assuring an outlet for Sales Service products. He enlisted the co-operation of E. J. Chambers of Associated Growers, who had participated in the first conference in 1933, and who had paid quantity discounts to the Western Grocers organization at different periods since 1932. A meeting which was attended by Mr. Staples, Mr. Riley, Mr. McCallum and Mr. E. J. Chambers of Associated Growers was held in Winnipeg in May, 1936. It was there agreed that, in order to encourage the purchase of British Columbia fruit and vegetables, discounts of approximately $20 per car should be paid by these large shipping agencies to Western Grocers Limited. The details of this arrangement will be discussed later; for immediate purposes it was but one in a series of deals since 1933 in which special considerations were involved between Western Grocers-Dominion Fruit and Sales Service Limited.

The alleged absence of control as the result of the reference to the Supreme Court is the explanation offered by Staples for his move to meet and discuss discounts and tonnages with Messrs. Riley and McCallum in Winnipeg in May

[4] For Staples' argument along these lines see his evidence, page 45.

of 1936. "We were agreed," he said, "that we would have to do something to meet the competition, the stress of competition that undoubtedly would develop as a result of the lifting of control."

As early as 1933 Associated Growers of British Columbia Limited had paid $4,095 in cash discounts to Western Grocers-Dominion Fruit on cars sold to these leading wholesalers. Mr. E. J. Chambers, Associated Growers' president, had participated in the 1933 conference and had travelled to Winnipeg with Staples to join in the negitiations in May, 1936. That such close association should exist between the co-operative agency and its largest single competitor may at first seem unusual. The explanation seems to be found in the generally held belief that any minor shipping group could shake or destroy the stabilized price structure of British Columbia fruit and vegetables in the prairie market. As explained by Mr. Chambers, Associated Growers believed that to secure market stability it had little alternative but to act with the other Valley groups which had any considerable tonnage, to assure that they would not embarrass the market and so adversely affect the price and volume of co-operative shipments. Mr. Chambers admitted in evidence that one fear he had had in 1936 was that Staples would make the discount arrangement himself and that Associated Growers would be left out.

W. P. Riley's desire to have his company, Western Grocers, directly represented in the Okanagan Valley had been known for some time to both Staples and Chambers. At the meeting in May, 1936, the subject was again raised in conversation between Riley and Staples, and a suggestion was made as to the possibility of Riley investing in Lander Company Limited. Neither Mr. Riley nor Mr. Staples is clear as to who first made the suggestion, but it appears that the offer, as such, came from Mr. Staples. Mr. Staples' explanation was as follows in part:

> "A. Following that discussion . . . I called on Riley and as I remember it, the conversation which took place was along this line, that Riley was not at all satisfied that he was getting a proper appreciation of the business he was giving British Columbia, not at all satisfied that that discount was a satisfactory discount in view of the conditions which we were facing and he said to me that in his opinion the Western Grocers would be well advised to forget all about it and put a buyer of their own out in this country. Now that is when I made the proposal to him that if he wanted to get out in this country we would sell him part of our business."

(Evidence, p. 1485)

Mr. Riley's evidence on the point of the initial offer of the investment was as follows:

> "Q. At the time you gave consideration to the establishment of a cash buying agency in the Valley, had you in mind the purchase of an interest in the shipping firm?—A. No, never thought of it.
>
> Q. How did the question of the purchase of an interest in the Lander Company arise?—A. Well, as I recall it, after we told that to Staples, I think it was at a later interview, as I recall it, he said to me, 'You talk about putting a cash buyer in the Okanagan, wouldn't you be just as well off if you had some shares in a going concern?' I said, 'Well, possibly we would.' He said, 'Well, I have got some shareholders that I would be very glad if I didn't have. Maybe I could buy their shares for you, would you like to have them?' 'Well,' I said, 'I do not know, I would like to see your statement and your profit and loss accounts; there are a number of other things to be considered.'
>
> Q. Did he say this the first time you broached the proposal to buy direct?—A. No, I do not think so. I think it was at a later interview.
>
> Q. Later, within the week?—A. Yes, I think it was inside of a week."

(Evidence, pp. 4136-7)

(a) Arrangements for the Investment

The letters which were exchanged following Mr. Staples' return to the Okanagan indicate the main considerations relating to the proposed investment. They illustrate the intention and attitude of the parties to the arrangement, and for this reason are set out here in some detail.

On June 17, 1936, Staples wrote to W. P. Riley:

> "There would seem to be no necessity to again go over the conversation which we had in Winnipeg when we agreed that any arrangement of the kind contemplated should be good for both contracting parties. We think it would be a good thing for the Lander Co. Ltd. to have the Western Grocers Ltd. for a partner. If the deductions I have made from these Balance Sheets are correct it would seem apparent that no one could lose any money by buying Lander Co. Stock at the price set up. We are agreeable to sell to you, up to Fifty per cent (50%) of our Shares in the Lander Co. Ltd. at the suggested valuation of Three dollars and forty five cents ($3.45) per share." (Exhibit 48)

Mr. Riley replied on June 22, suggesting that the Lander company should have at least 50 per cent of the Browne Company Limited (Penticton) shares. On June 27, 1936, Mr. Staples wrote that arrangements were being made to secure this percentage. He also indicated his reaction to the Supreme Court decision of June 17, 1936, invalidating the Dominion Natural Products Marketing Act:

> "A great deal could be written, but everything can be summed up briefly by saying that it is the intention to carry on voluntarily the same plan which was carried on last year under the Produce Marketing Act. We are neither supporting, nor opposing, this move but will keep prepared to follow what seems to be good policy for our Companies."
>
> (Exhibit 48)

By the first week in July the directors of Western Grocers Limited had approved of the purchase, and Riley wrote to Staples on July 6, suggesting that he and A. C. Lander keep their shares and use other holdings for the transfer so as to have Staples and Lander "maintain (their) interest and association."[5] At this point, too, Western Grocers were concerned about the question of publicity attendant upon its acquisition of such shares, for the same letter asks:

> "Also, when acquiring these shares, what is your idea as to whose name they should go into. The money will be furnished by Dominion Fruit, Limited, and we could put some shares in the name of Mr. Stewart and some in the name of Mr. McCallum, and some in the name of the Company. Is your Company a private Company, according to the B. C. Act, and do you have to post the names of the shareholders? All of these things have a bearing on whose name the shares should be in. If you have to post the names of the shareholders at Victoria, do you have to say how many shares they have?"
>
> (Exhibit 48)

Meanwhile Mr. Staples undertook to re-purchase the Lander company stock not in his or A. C. Lander's possession. The largest block was 2,424 shares in the name of the Finch Investment Company, Minneapolis, Minnesota. Control over these shares was exercised by Mr. J. A. Simington, formerly the leading Canadian figure in Nash Simington Company, Limited. Mr. Simington was a large shareholder in the Nash-Finch Company, which appears to have been corporately related to the Finch Investment Company. These shares had been allotted and transferred to the Finch company on September 31, 1933. No explanation was given by Mr. Staples for this Simington investment, except to the effect that it constituted a friendly investment by a Nash executive in the enterprise of one of his former employees. On Mr. Staples' request, Mr. Simington on July 9, 1936, forwarded to him the 2,424 shares to be sold as desired.

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[5] Letter W. P. Riley to R.B. Staples, July 6, 1936 (part of Exhibit 48).

On July 10, Staples replied to Riley's request for advice on how Western's shares should be registered:

> "I am first answering the latter part of your letter of July 6. The Sales on Consignment Act passed by the Dominion Government, I believe in 1926, probably makes it undesirable that the Western Grocers Ltd. ownership in the Lander Co. should be disclosed to the public at large. There is this to be said for the Sales on Consignment Act that it is only effective in a few of the Provinces of which, however, British Columbia is one. Even in British Columbia it is considered to be a dead letter. Nothing has even been done about it. Neither the Government nor the Producers, nor any of the Shippers and Dealers who might be affected pay any attention to this Act whatsoever.
>
> I should think you would feel inclined to ignore it entirely, but it is still on the Statute Books and among its clauses is one which states, in effect, that the operation of our Company would be contrary to the Act if a major portion of our Shares were held by a firm such as the Western Grocers. I presume that in the case of ninety-five per cent of the private Companies of British Columbia no one makes any enquiry as to who the stockholders are, but the fact remains that the payment of $1 will secure the names of the stockholders and the number of shares they hold of any Company registered in British Columbia, either public or private. It would seem, therefore, that a holding trust is indicated in this case for the major portion, if not all of the shares which you are about to acquire. . . .
>
> Mr. Lander and myself are looking forward with a good deal of enthusiasm to our association with you, to the possibilities of expansion and to the probability of mutual benefit. We are arranging that there shall be only three shareholders in the Lander Co. Ltd., namely Mr. Lander and myself each holding twenty-five per cent, and your group holding the other fifty per cent. Besides Mr. Lander and myself there are only three shareholders, namely Mr. Simington, Mr. J. B. Lander of Regina and our Accountant Mr. Reader, of Vernon. These shares were issued to these three men in the first instance as a friendly gesture and with the understanding that should they want to dispose of them we would take them back, and should we want them at any time they would agree to let us have them. There will, therefore, be no difficulty about these shares and by July 15th we should have them all re-called and be in a position to inform you the above program, with regard to the holding of our stock, has been carried out."
>
> (Exhibit 48)

Points of interest in this letter include the references to the question of the legality of the proposed shareholding by Western Grocers, to the anticipated expansion in Sales Service business as a result of this investment, and to the suggested allocation of shares with a reference to the condition under which shares had been issued to the three Sales Service shareholders exclusive of Staples and Lander.

Another letter dated July 14, 1936, from Mr. W. S. Graham, treasurer of Western Grocers Limited, touching upon Western's concern over the Sales on Consignment Act, was received by Staples, to which he replied on July 18:

> "It is difficult for us to give you very much help in coming to a conclusion because we more or less look upon the Sales on Consignment Act as a dead letter. So far as we know no case has ever come before the Courts under this Act.
>
> It would appear, therefore, that your guess on this Act is quite as good as anyone elses. You understand, of course, that the Western Grocers Ltd. can do no harm in this case and that only the Lander Co. is affected by any infringement, or shall we say enforcement of the Act. As President of the Lander Co., after giving the matter full consideration and discussing it thoroughly with our Solicitor I am not greatly concerned about the Sales on Consignment Act as a factor in our deal.
>
> I do think that it would be unwise to direct attention towards the fact that the Western Grocers are actively engaged in the Fruit Business in British Columbia."
>
> (Exhibit 48)

The confidence expressed by Mr. Staples in this letter was not shared fully by Western Grocers and Dominion Fruit officials, for in his reply of July 20, Mr. W. S. Graham stated:

> "We have had in mind the Sales on Consignment Act, and while, in B.C., it is considered to be a dead letter and nothing has ever been done about it, still, we

cannot disregard the fact that it remains on the statutes. It seems to us, however, that with 9,000 shares recorded in the names of Mr. Staples and/or Mr. Lander, there would be nothing in the set-up to make the operation of your company, in its relations with Western Grocers, Limited, and/or Dominion Fruit, Limited, contrary to the Act."

(Exhibit 48)

Mr. Graham's intention was to conceal the nature of this transaction so as to keep unknown the identity of the new shareholders in the Lander Company. With this letter was enclosed a cheque for $31,691.70, representing payment for 9,186 shares at $3.45 a share. Graham proposed that 9,000 of these shares be registered in Staples' or Lander's name, or divided between them, with certificates endorsed by either or both. The remaining 186 shares were to be registered in the name of Alexander McCallum. Mr. Graham was not certain as to the advisability of having McCallum as one of the registered shareholders, for in the same letter he added:

"We are presuming that there is nothing in the proposed recording of stock, particularly the odd 186 shares, to which you see any objections, from your point of view, but if there should be just hold up the registration until you communicate with us further."

Not satisfied with this caution, Graham wrote to Staples again on the same day suggesting procedure to avoid showing McCallum's holdings on the annual report under the Companies Act, so that the connection of Western Grocers Limited and Dominion Fruit Limited with Lander Company could not be gathered from a perusal of these returns:

"With reference to our other letter of to-day's date, and in particular the 186 shares to be recorded in the name of Mr. McCallum, we believe that the return to the Registrar of Companies B.C. is made as of the day after your Annual General Meeting, whichever that happens to be. In other words, only in one day in each twelve months does the Registrar of Companies get the names of your shareholders. Therefore, to keep even Mr. McCallum's name out of your shareholders' register, we have figured that, while the stock might stand in his name for 364 days in the year, on the 365th one, (the day on which you have to report) his stock could be transferred back into Mr. Lander's or Mr. Staples' name, and then, the day after you have made the report, transfer from Mr. Staples' or Mr. Lander's name into Mr. McCallum's again. This is just a stray thought, but, if it looks good to you, and is practicable, you can let us know, and the matter can be attended to in due course, for presumably you would be sending along advice of the date of your Annual Meeting in good time before it is held, so that a trade-out and trade-back again could be handled easily.

If our suggestion looks alright to you, it would seem that Messrs. Staples and Lander should provide an undertaking by letter that, notwithstanding the provisions of your Articles of Association, they, as directors and shareholders, would see to it that the stock was again registered in Mr. McCallum's name. The point is that, on the 365th day, Mr. McCallum would no longer be a member of the company, and, if the provisions of your Articles were lived up to 100 per cent, your company could object, and prevent his becoming a member again, and we would naturally like to have protection by obtaining the undertaking of the gentlemen named, to guard against anyone raising technicalities." (Exhibit 48)

Mr. Staples, however, was not impressed by Graham's anxiety over registration and, writing to Graham on July 23, he outlined a proposed disposition of the shares:

"I have received your cheque No. 735 for $31,691.70, which I am holding in escrow, and with which I am to purchase for you 9,186 shares of the Lander Co. Ltd. representing exactly Fifty per cent of their issued Capital Stock. 186 of these Shares are to be issued in the name of Alexander McCallum, and 9,000 shares are to be issued in the name of R. B. Staples endorsed in blank and accompanied by documents properly safeguarding the Western Grocers Ltd. so that their ownership of these Shares is of the same effect as tho they were registered in the name of the Western Grocers Ltd., or of the Dominion Fruit Co. Ltd.

I have read both your letters dated July 20th, and I agree with what you have to say. However, I see no reason why Mr. McCallum should not appear as the holder of 186 shares in our Company, and that these Shares should be treated and registered in the regular way." (Exhibit 48)

Graham thereupon replied to Staples, warning him that Western Grocers Limited were not to be regarded as a direct party to this transaction:

> "This will acknowledge your of the 23rd. Just in case there might be any misunderstanding, which might affect any documents you are drawing, may we say that, officially, Western Grocers, Limited, are not in the picture. While all your correspondence has been addressed to us, the investment in your shares is being made by Dominion Fruit, Limited, who will be the actual owners of the 9,186 shares." (Exhibit 48)

The investment thus was made by or on behalf of Western Grocers' subsidiary company, Dominion Fruit Limited. A final letter from Graham suggested special arrangements for the 186 McCallum shares:

> "This will acknowledge receipt of your letter of the 31st, together with share certificates covering 9,186 shares of your company's stock, also a declaration of trust in connection therewith.
>
> Believe there is just one point overlooked, that mentioned in the last two paragraphs of the first page of ours of July 20th. We would like an undertaking, signed by Messrs. Staples and Lander, notwithstanding the provisions of your Articles of Association, that they, as directors and shareholders, will raise no objections, and will see that your company raises no objections, to having all or any part of the 9,186 shares Dominion Fruit, Limited, now owns being registered in the name of Mr. McCallum, or any other nominee of the Company.
>
> Your Articles give your company, in effect, a sort of perpetual option, and while Mr. McCallum is now a stockholder, he may not always be here, and Dominion Fruit, Limited, may, some day, require that the 186 shares, or the 9,000 for that matter, be put in the name of some other nominee, and, as your Articles now stand, your company could hold us up on that, if anybody desired to be technical.
>
> Therefore, as we want to protect Dominion Fruit Limited's investment—indeed' we have to, to satisfy our directors—we would like an undertaking, signed by Mr. Staples and Mr. Lander as stated, that, as stockholders and directors of Lander Co. Limited, they will see to it that all or any part of the 9,186 shares, which Dominion Fruit, Limited, now own, will be, upon request of such owner, recorded in the name of any nominee whom Dominion Fruit, Limited, may select." (Exhibit 48)

Staples and Lander supplied this undertaking to Dominion Fruit Limited on August 10, 1936, as follows:

> "We undertake as Directors and Shareholders of above Company that notwithstanding any provisions contained in the Articles of Association of the Company we will not as Directors or Shareholders place any obstacle in the way of the registration of the 9,186 shares in the above Company, recently transferred to Dominion Fruit, Limited, in the name of that company or of Mr. McCallum or any other nominee of your company."

In an accompanying letter Staples made a further suggestion as to the disposal of shares by the three shareholders in Lander Company Limited:

> "As you request we attach an Agreement which meets the requirements of your letter of August 4th. We quite understand your viewpoint and no further discussion is necessary. We would appreciate your bringing to the attention of your Principals this thought which occurs to us: 'None of the present three Shareholders of the Lander Co. Ltd. should dispose of their Shares in that Company without consulting the other two.'" (Exhibit 48)

The dominant note throughout the foregoing correspondence showing the arrangements made for the holding of the Lander company stock may accurately be said to be the uncertainty of the parties as to the legality of their actions under British Columbia law, combined with the unmistakable desire of Western Grocers Limited for secrecy both as to the arrangements as a whole and in respect to the actual registration of the shares.

(b) *Purposes of the Investment*

The object of the purchase of the Lander Company Limited stock by Western Grocers' subsidiary company, Dominion Fruit Limited, was stated to have been the desire to obtain a definite source of supply of British Columbia

fruits and vegetables, so as to complete its chain in the distribution of these products from producer to consumer. In reply to a question regarding the advantages which Western Grocers Limited would derive by obtaining an interest in a shipping organization, Mr. Riley stated:

> "What I had in mind was this, being heavy buyers of British Columbia stuff, if we were to find ourselves in unfriendly hands it could easily be the case, if things were very well tied up with Associated, who control their own brokerage offices throughout the country, that we could be pretty well hung up for supplies. We might be put in a disadvantageous position through our source of supply getting into unfriendly hands and that is what I was afraid of." (Evidence, p. 4137)

Mr. McCallum, superintendent of Dominion Fruit Limited, indicated the purpose of the investment as follows:

> "It was for the purpose, I think, of putting ourselves in a position to be in the shipping business in British Columbia. It was so that we might be assured of supplies." (Evidence, p. 4220)

Mr. Staples explained his view of Western Grocers' object as follows:

> "Q. From the point of view of Western Grocers, they were concerned about their source of supply, were they not?—A. Undoubtedly.
>
> Q. And an investment by them gave them, shall we call it again, insurance in respect to that source of supply, is that so?—A. I would hardly think so; they are very large buyers in British Columbia and it is not my business to speculate on what Western Grocers were thinking. You could find that out, they will tell you. I do think they might have thought, when they were about it, that it was an advantage to them that 100 per cent of their supply should not fall into unfriendly hands. Such a thing could happen to a concern of their size, and if it did they would be at some disadvantage. I hardly think that they looked upon us as a source of supply beyond the fact that they were building up a business, that they were entering into a business through which they could look for all their supplies." (Evidence, pp. 1497-8)

Thus while Staples was concerned about any possible threat to the continuity of his outlet through the Western Grocers organization, the latter claim that they were seeking a steady source of supply. This could not, however, have been the only reason. The evidence, as already indicated, showed that Mr. Riley was not satisfied with the discounts allowed his company and was considering a cash buyer. He considered he was giving to British Columbia a great deal of business which was not properly appreciated. This does not indicate apprehension concerning sources of supplies, nor do the records of British Columbia fruit production indicate that any large jobber need have doubted the availability of supplies. The source which was selected—Lander Company Limited, and through it Sales Service Limited—controlled about twenty per cent of total fruit shipments from the British Columbia Fruit Board districts. On the other hand Western Grocers' and Dominion Fruit's requirements of British Columbia fruit amounted to approximately forty per cent of the total British Columbia supplies to the three prairie provinces. With occasional exceptions, Western Grocers and Dominion Fruit received the largest single share of their British Columbia fruits from Associated Growers, as shown in Table 22.

The real motive prompting the investment appears to have been to enlarge the area of control over the distribution of fruit supplies passing through Western Grocers and Dominion Fruit branch houses. In the case of British Columbia fruit and vegetables, there had been no control by Western Grocers Limited over sources of supply. To add the final link in the distribution chain from producer to consumer, this company sought control of shipping organizations in the Okanagan Valley. The desire to have its interests touch every phase of the marketing of British Columbia fruits and vegetables seems to have been the dominant purpose of the investment in Lander Company Limited by Dominion Fruit Limited.

(c) *Relation of the Investment to the Agency Duties of the Okanagan fruit shipper*

It is difficult to see how the relationship between Dominion Fruit and the Lander company—that is, between jobber and shipper—can be reconciled with the fact that the shipper is the servant or agent of the grower, charged with the legal and moral duty of representing the grower's interests in dealing with the jobber. Contracts executed between growers and shippers are contracts of agency under which goods are consigned by grower-principals to shipper-agents and are sold by the latter, who return the proceeds to the growers, less certain stipulated deductions. The rejection of the "firm sale" method by British Columbia fruit growers as early as 1922 gave rise to sales by consignment.

Duties and rights of a shipper are indicated in the following summary of provisions of a typical "independent" grower-shipper contract:

(1) That the grower in question will deliver all of his fruit to the shipper named in the contract;

(2) That certain stipulated deductions are to be made after sale by the shipper, among which are certain specific items listed in the conditions to which the grower is supposed to subscribe, and which conditions are usually enumerated on the back of the contract;

(3) That the shipper will "ship and market such fruit to the best of the ability of the company";

(4) That the shipper has authority to pool consignments by grower-principals;

(5) That the shipper shall have a lien on the grower's consignment to the extent of all sums owing by the grower to the company under this agreement;

(6) That the contract continues in force if the grower continues to be indebted to the shipper.[6]

In executing the contract, the shipper is bound by well established rules which determine the incidence of rights and duties as between principal and agent. The most important of these is the concept of the agent's loyalty to his trust and to his principal, a loyalty that must not be compromised by interests or duties antagonistic to those of the principal whom the agent represents.

In the investment made by Dominion Fruit Limited in the Lander Company Limited, such a conflict does exist on two points; first, on the principle that the agent must assume no relations with interests antagonistic to those of his principal; and second, that, having entered into the relationship involved in this investment, it became the duty of the agent at once to inform all his grower-principals of his new status.

The interest of a jobber who buys fruits and vegetables from a shipper is adverse to that of the grower whose products are being bought. If the jobber has a substantial interest in the shipper, the shipper cannot be expected to exercise independent control as an agent for his grower-principal; he is placed in a position of having conflicting responsibilities.

Such considerations were emphasized strongly in the report under the Combines Investigation Act in 1925 on the Nash jobber-broker combine, and in Mr. Justice McDonald's charge to the jury in the trial which followed. Following the investigation and the convictions in that case the British Columbia Legislature passed the Sales on Consignment Act in 1927. Section 27 of that Act specifically prohibits any mercantile agent from carrying on business in the province if the major or substantial portion of such agent's shares is held by a fruit or vegetable jobber, and prohibits sales by any mercantile agent to a corporation that owns or controls such agent or to a member of a group of organizations or corporations to which such agent belongs.* Both Mr. Riley and Mr. Graham of Western Grocers Limited had been concerned about this provision. The investment nevertheless was made.

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[6] From grower-shipper contract of Occidental Fruit Company, Limited, Kelowna, B.C. (Exhibit 11).

*See footnote, page 52.

Counsel for Western Grocers Limited argued that

> "... there is no agency relationship between any grower and Lander Company, nor between any grower and Sales Service, Limited. Sales Service merely distributes orders. All decisions in regard to each individual order are made by the shipping house concerned, and in some cases by the actual grower himself."

Strictly speaking, Lander Company Limited is not now a grower-agent. It was such an agent, however, until March, 1937, when it ceased to be a merchandising organization and became a holding company. From July, 1936, until March, 1937, it did have grower relations while 50 per cent of its shares were held on behalf of Dominion Fruit Limited. Moreover, while Sales Service Limited may have no direct grower relations, it is a selling agent for all its shipper members, and to the extent that such shipper members have the authority to delegate their selling duties, Sales Service Limited becomes the shipper's agent and thus sub-agent for the grower-principal. The fact that Sales Service Limited, as well as four shippers, are controlled financially by Lander Company Limited, which in turn is subject to a 50 per cent share interest held by a fruit jobber, gives to Sales Service Limited and these shippers an interest adverse to their basic duty to grower-principals.

3. Effects of the Jobber Investment in Lander Company Limited

No evidence has been secured which would show that the jobber investment in the Lander company encouraged sales by Sales Service Limited to Western Grocers or Dominion Fruit at prices less than those generally prevailing f.o.b. the Okanagan Valley and adjacent districts, although allegations were made to

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* Section 27 of the British Columbia Sales on Consignment Act is as follows:

"27. (1) So far as the legislative authority of this Province extends, no corporation authorized to carry on the business of mercantile agent, the major or a substantial portion of whose shares is held:—

(*a*) By or on behalf of any person or persons, shareholders in any corporation carrying on within or without the Province a wholesale or jobbing business in products; or

(*b*) By or on behalf of any person, partnership, or corporation or group of corporations carrying on within or without the Province a wholesale or jobbing business in products; or

(*c*) By or on behalf of any partnership or corporation which is part of, or a member of, or belongs to a group or organization of partnerships or corporations carrying on within or without the Province a wholesale or jobbing business in products,—

shall carry on the business of mercantile agent in the Province; and no corporation authorized to carry on the business of mercantile agent, which is part of, or a member of, or belongs to a group or organization of partnerships or corporations, or both, carrying on within or without the Province a wholesale or jobbing business in products, shall carry on the business of mercantile agent in the Province.

(2) No mercantile agent shall sell, consign, or otherwise dispose of the products of his principal to:—

(*a*) Any partnership or corporation which is substantially owned, operated, or controlled by the same person or group or class of persons, or organization, as substantially owns, operates, or controls the mercantile agent:

(*b*) Any partnership or corporation which is part of, or a member of, or belongs to any group or organization of partnerships or corporations, or both, to which the mercantile agent belongs or of which the mercantile agent is a member or part.

(3) The Supreme Court shall have such jurisdiction as may be necessary to give effect to the provisions of this section, and in addition to any other relief may, on the summary application of the Attorney-General order the dissolution of any corporation incorporated under the laws of the Province which contravenes any provision of this Act, or order the cancellation of the registration of any corporation which is registered under the 'Companies Act' which contravenes any provision of this Act.

(4) Every mercantile agent contravening the provisions of this section shall be guilty of an offence against this Act."

this effect. It appears from records examined that Sales Service has at times pressed for a lower price structure in the sale of certain fruits to prairie jobbers, and has co-operated with Western Grocers and Dominion Fruit branch house managers in prairie cities where independent or other competition was most active.

(a) Floor Stock Protection

Floor stock protection is the practice, commonly used by British Columbia fruit shippers and prairie jobbers, whereby a shipper compensates the jobber for a drop in the price of such recently purchased stocks of fruits and vegetables as remain unsold on the jobber's floor at the time of a general or specific price decline. This practice has been extended, under the same name, to rebates for price reductions upon fruits and vegetables sold and shipped to the jobber but not delivered. The amounts so paid are deducted from the returns to the grower. The jobber is protected against a sharp price decline, but the grower has no corresponding privilege of an additional return where there is a sharp rise in prices after sale. On this situation A. K. Loyd, president of the British Columbia Fruit Growers Association, said in evidence.

> "The shipper takes no risk, and the buyer takes no risk. He buys and the man that is taking the risk from beginning to end is the grower, and of course the grower pays for it." (Evidence, p. 462)

The number of growers ready to sell and the few jobbers in the market to buy is the basic explanation of the practice. It develops when jobbers show reluctance to purchase products subject to rapid and frequent price changes, and when growers or shippers believe that a surplus compels them to use such measures to encourage large and uninterrupted purchases. Conflicting opinions as to the necessity or desirability of the practice have been given by many witnesses—growers, shippers, brokers and jobbers—in the Okanagan Valley and on the prairies. The consensus of opinion among growers, shippers and brokers who gave evidence appears to be that, as a general practice, floor stock protection is undesirable and unjustifiable, but that under some circumstances the interests of the growers themselves are best served by its application. One grower who has also had wide experience in the jobbing business suggested that a jobber who in certain market conditions would not risk taking more than a couple of hundred cases of Wealthy apples in a car might easily be talked into taking a whole car if he knew that he would get protection. Another thoroughly practical attitude was expressed by a shipper who gave an example of several cars of apples shipped at $1.00 a box. If the apples were not moving from the jobber's warehouse on the basis of that price and other apples were waiting to come on the market the best thing to do in the grower's interests, he considered, would be to drop the price, say to 80 cents.

On commodities such as tomatoes, on which it is next to impossible at certain seasons to set in advance prices that are likely to hold, many growers would concede that jobbers are entitled to protection against a sudden drop in price. The prairie broker, representing the grower's interests, may or may not be able to hold out against a vigorous jobber demand for such protection. One shipper expressed doubt on this point when questioned as to whether he considered floor stock protection a desirable policy. He said:

> "A. No, it can be very badly overdone. In this way: the broker, as a rule, derives his livelihood from the orders he gets from the jobber. He is supposed to represent the shipper but in most cases I would say he largely represents the jobber because, as I say, he derives his livelihood from the orders he gets and he can't be too severe on the jobber, otherwise the jobber would cut him off from his orders. Well, it is a very easy matter for the jobber to claim on floor stocks and merely advise the broker he has so much on hand. They, in many cases—and in most cases, I would say—check it but in some cases it is not checked and a man could very readily get away with a floor claim and have no fruit on the floor." (Evidence, p. 1081)

The injury to growers' interests is obvious if, in establishing a floor stock protection policy, the broker were controlled directly by the jobber, as the Nash brokerage houses were controlled in the early twenties. The broker then would be only too ready to yield to the demands of the jobber. If shippers were similarly controlled, the damage to growers would probably be even more serious. This is one possibility that is feared through the relationship of Western Grocers as jobbers and Sales Service as shippers; specifically the danger that the shipper would grant protection too freely, at the grower's expense, and that other shippers would have to be equally generous with their growers' funds in dealing with these and other jobbers.

Mr. Staples had expressed himself in correspondence, even before Western Grocers became financially interested in his shipping company in 1936, as opposed to the policy of floor stock protection. He said in evidence:

> "A. ...We have always opposed it because it is a miserable thing to handle, you do not know whether they have the stocks there or whether they haven't them there. Finally, it is a nice thing, when you make a sale to know that it is going to stick and that your records are correct. However, it has been given by ourselves."
>
> (Evidence, p. 1548)
>
> "Q. ...Now, you said yesterday that you did not like the policy of floor stock protection; is it not a fact that you are compelled to give it in many instances?—A. It is a fact that we have given it in many instances.
>
> Q. Notwithstanding the fact that you dislike it and you think it is an improper situation, is that a fair statement?—A. I would not go to that extent and say it is absolutely improper. However, it seems to me that when a car of stuff is bought, it ought to stay bought. On the other hand, an arbitrary reduction in price undoubtedly injures the purchaser who purchases in good faith." (Evidence, p. 1619)

Mr. Staples claimed that the actual amounts paid out by Sales Service Limited or its members for floor stock protection did not increase after the investment in Lander Company Limited. While the investment may not have substantially affected floor stock protection policies there seems little doubt that the close relations between Sales Service and Western Grocers predisposed Sales Service toward demands for "protection" by Western Grocers and Dominion Fruit branch houses.

(b) *Condition Claims and "Policy" Claims*

Condition claims are claims by jobbers against shippers for alleged deterioration or damage to fruit and vegetables before they reach the purchaser. They include claims because of inferior quality or grades, or because of the "breakdown" of fruit after its arrival, and frequently after its sale to retailers, due to conditions of advanced ripeness at the time of sale and shipment. "Policy" claims are condition claims which a shipper considers it good policy to meet in order to retain the jobber's goodwill even though the shipper may doubt the validity of the claims. Unless an accurate check is made of a jobber's claim that a shipment was not in proper condition, the shipper may be exposed to improper exactions. The practice of demanding heavy allowances for alleged deterioration was disclosed in the fruit inquiry in 1925, and the condition was improved by the breakup of the jobber-broker combine. Growers and shippers may now look to independent brokers, and to the local fruit inspectors of the Dominion Department of Agriculture, to challenge or confirm the claims made by jobbers.

Although these claims have declined in recent years, both in frequency and amount, they continue to exist and to characterize most shipper-jobber relations. E. J. Chambers of Associated Growers, and others, have insisted however that condition claims do not amount to any considerable percentage of total sales. Mr. Chambers said: "Our claims have never been excessive, we fight them hard." Independent brokers in Winnipeg also suggested that while condition claims may have been a serious and questionable practice in the

Nash organization, they have ceased to be important. Other independent operators, and major branch house managers in Winnipeg, Regina, Saskatoon, Edmonton and Calgary, maintained that condition claims, while prevalent, are no longer a considerable item in jobber-shipper transactions.

The validity of a condition claim is usually checked for a shipper by his broker, or may be checked by a Dominion government fruit inspector, who examines the goods on which the claim is based. It has been suggested that, if all sales were made f.o.b. the Okanagan Valley on a "cash acceptance basis," condition claims would not be made. A real difficulty is that this method might not be conducive to maximum purchases for the prairies, since buyers having to pay cash against documents would purchase only minimum requirements.

The general attitude of Sales Service Limited toward condition and policy claims is stated by Mr. Staples to be the same as on floor stock protection: the company has opposed them and Mr. Staples has insisted that no change occurred in the company's stand on this matter after the investment by Dominion Fruit. An examination of records of the company from 1934 to 1938 showed that most of the condition and policy claims were paid on soft fruits, which are susceptible to deterioration in transit and therefore give rise to more condition claims than other fruits such as apples. The management of Sales Service Limited has attempted to test the accuracy of claims and has made efforts toward having them reduced even to Western Grocers and Dominion Fruit branch houses. Significant, however, is the following statement made in a letter of March 30, 1937, to Mr. McCallum in which Mr. Staples states, in referring to a condition claim for $293 made by the Sterling Fruit Company of Winnipeg, a Dominion Fruit Limited house, that already that year his company had paid Western Grocers-Dominion Fruit houses $1,500 in policy claims:

> "One way we could handle this claim would be to treat it as a policy claim and hand the Sterling Fruit Co. $293 out of Sales Service funds. You should understand that our policy claims are claims which, for one reason or another, it is impossible for us to make the shipper pay. Now already this year we have paid to your houses something like $1,500 in policy claims. It doesn't sound very much but we have finally put our foot down largely because somewhere we must give full consideration to the fact that a very large Shareholder in our Company is paying half of these claims and without being consulted." (Exhibit 73)

It is difficult to indicate the extent to which the corporate relations between Dominion Fruit and Lander Company have influenced Sales Service decisions in such maters. These relations encourage Sales Service to give a maximum of attention to such claims and to yield at points where, if the parties were independent of each other, the claims might be refused. The difficulty was expressed by E. J. Chambers, when he stated his view of the effect of a jobber investment on a shipping organization:—

> "Q. If you were controlled by Consolidated Fruit Company or the Consolidated Fruit Company had an interest in your business, you would be more likely to meet claims?—A. Very much more; we had that experience this year when the Edmonton jobbers decided to go past the brokers and buy direct. We ran into two or three very heavy claims. I do not know whether you noticed the letter on file there or not, but I have a very strong letter to Stockton on claims. I simply told him we were not going to argue any longer on it and we would simply take it out of his discount.
>
> Q. If Stockton were your boss, you might not write such a strong letter?—A. I do not think I would.
>
> Q. Or if Stockton were a business associate of yours and had an interest in your business?—A. It would be a different situation, naturally." (Evidence, pp. 1789-90)

(*c*) *Quantity Discounts*

Discounts for quantity buying are well known in almost every large industry where large-scale buying occurs. Unit costs are ordinarily lower in selling large quantities than in selling small quantities, and the large buyer is considered

entitled to share in these savings. Large buyers also usually conduct extensive enterprises with substantial cash and credit resources, and are therefore often likely to be better credit risks than smaller purchasers.

In the sale and distribution of Okanagan fruits and vegetables in Western Canada, discounts, rebates, "blow-backs" and other devices have, for many years, been paid by shippers to "encourage" jobber purchases. No generally formalized discount method developed before 1930. Informal rebates of all kinds were given, but these had no direct relation to an actual number of cars bought by any jobber, nor were they estimated upon a per car basis, with a graduated rate according to the total number of cars purchased. The first attempt at a regular discount system appeared in 1929-30. Counsel for Western Grocers Limited has incorporated in his argument the following brief statement of the development:—

> "At a special joint meeting of the directors of B.C. Growers and Shippers Federation and the Committee of Direction held on the 2nd September, 1929, it was resolved to grant a discount not to exceed 3 per cent to wholesalers who maintain travellers, etc. . . . The matter was referred to and a similar recommendation made by the Chairman (Mr. Carruthers) of the Shippers Federation on 31st March, 1930. Shippers Federation passed a resolution 3rd July, 1929, to the Interior Committees that the discount be increased to 5 per cent."

It has been suggested that the decision to hold the meeting in Winnipeg in 1933, attended by Messrs. Riley, Stockton, Chambers, Staples and McGuire, was prompted by a resolution of the British Columbia Growers and shippers Federation made early in 1933. This meeting arrived at no official agreement to institute a discount on sales to any of the major jobbers. But arrangements were made privately for discounts to be paid by Sales Service, Associated Growers, and others, as is evidenced by the fact that discounts amounting to over $13,000 were paid in that year to Western Grocers Limited and Dominion Fruit Limited.

The 1933-34 arrangements for discounts were renewed in the summer of 1934, with an increase from $20 to $22.50 per car. At the same time Sales Service made a direct deal with the Western Grocers organization whereby brokers were not to be employed for that season. The nature of these arrangements, and the occasion for their revision later in the season, are explained by R. B. Staples in a circular to all Sales Service members, issued on November 22, 1934:

> "We made arrangements with the Management of the Western Grocers Ltd. and the Dominion Fruit Ltd. early this season whereby we agreed that, in the event of their total purchases exceeding 600 cars, we were to allow a discount of $22.50 per car, being equivalent to a Quantity Purchase Discount of approximately 3 per cent.
>
> We were able to pay this discount without additional expense to our shippers by reason of the fact that we did not employ Brokers this season. Recently the Board of Control decided to charge brokerage to the Pools, making it no longer possible for Sales Service to take care of this discount to the Western out of our charges. At the same time the Board requested us to discontinue this discount arrangement with the Western. We pointed out that the deal was one which had been made before the Board came into existence, and stated we would make every effort to secure the consent of the Western to the Cancellation of the arrangement.
>
> The Western Grocers Ltd. gave their consent provided all arrangements of a similar character were discontinued, and referred particularly to arrangements which, they believe, existed as between the Consolidated Fruit Co. and the Associated Growers. Your Manager has had two or three talks with Mr. Chambers on the subject—Both Mr. Chambers and myself are of the opinion that the Western Grocers Ltd. and the Consolidated Fruit Co. are entitled to some consideration due to the fact that apparently consideration is being given in the form of price concessions to various small Jobbers throughout the Prairie and in British Columbia.
>
> It has been decided, therefore, not to discontinue the giving of this Quantity Purchase Discount, and both the Associated Growers and ourselves will continue to allow a Quantity Purchase Discount of $20 per car to the Western Grocers Ltd., the Dominion Fruit Ltd. and the Consolidated Fruit Co. Ltd.

The Western Grocers have requested that this discount be not paid to the individual houses, but that it be paid to the Head Office in Winnipeg. You are requested, therefore, not to show this discount on the original invoice which goes to the Jobber.

In order to connect up your invoices with the above deal we are enclosing a rubber stamp which we want you to use on all invoices made out to Dominion and Western Houses. In order that no mistake be made we are again attaching list of these houses. Confine use of this stamp to the houses on this list.

SALES SERVICE LIMITED,

R. B. STAPLES,
Manager."

(Exhibit 49)

The creation of the British Columbia Tree Fruit Board in August, 1934, led in the following spring to an agreement by large Okanagan shippers to discontinue such discounts and to abide by Fruit Board prices, without payment of any rebates to jobbers. In reporting this arrangement to Mr. McCallum of Dominion Fruit, Mr. Staples said:

"We have been working for the last three months, if not longer under a price structure which was too high. All advances made to the Board to secure re-adjustment have had the same result, namely no result at all. Finally the Board came to Sales Service and the Associated and said that if we would give our word to adhere to the new price structure, no rebates and no evasions of any kind, they would consent to adjustment of prices. The Board felt that with the Cartel percentages operating there would be no difficulty in holding all the smaller shippers who at any given time would probably be unable to ship more than one car in any case. We consented to this bargain with the Board, and letters have gone out to-day signed by ourselves and the Associated, which indicate our intention to keep the faith."

(Exhibit 64)

Dominion Fruit accepted the new conditions, but with reluctance.

No further arrangements for quantity discounts appear between the Western Grocers organization and Sales Service, together with Associated Growers, until the Winnipeg meeting in May, 1936, attended by Messrs. Riley, McCallum, Staples and Chambers. It was agreed then that $20 per car should be paid on all cars shipped by these two organizations to Western Grocers and Dominion Fruit branch houses, if the total purchases exceeded 200 cars from each of Sales Service and Associated. Since the Western Grocers-Dominion Fruit organization had not bought less than 500 cars of apples from either since 1934, fulfilment of this provision was undoubted. In the course of these Winnipeg negotiations Mr. Riley had asked for a larger discount than $20 per car, but finally accepted this amount. Directions were given by Western Grocers to pay the discount directly to head office and not to the branches. It was agreed that the same discount was to apply also to any deal with Consolidated Fruit Company Limited. Mr. Chambers has explained this:

"Q. How did it come about that Stockton was included in these two quantity discount arrangements which were made by you with Riley?—A. Any arrangements which we have ever made with Riley have always applied to the Consolidated Fruit Company because the two organizations are in some ways somewhat similar. They are the most important organizations, and one organization linked to Associated Growers is not a sufficient avenue of distribution. Even if we had 100 per cent of their business, it would not be sufficient to take care of our distribution."

(Evidence, p. 1709)

The 1936 discount arrangements were secret and were not communicated to other shippers nor to the growers shipping through such organizations, although doubtless they became known to many of the locals of Associated Growers and to several of Sales Service shipping members. They came into force almost at the time negotations had been completed between Messrs. Staples and Riley for the investment in Lander Company Limited.

In August of the following year, 1937, R. B. Staples voluntarily offered to continue the discount arrangement with Western Grocers-Dominion Fruit. It was continued until December 7, 1937, when the institution of the "one desk" deal by the British Columbia Fruit Board led to cancellation of the discounts by Associated and Sales Service. Both Consolidated Fruit and the Western Grocers-Dominion Fruit organization were affected by the cancellation and protested against it. The Board on February 14, 1938, authorized the restoration of quantity discounts as a measure to encourage the major jobbers to increase their selling efforts. Accordingly Associated and Sales Service commenced payments again. Western Grocers insisted, however, that payments be made retroactive to December 7, 1937, despite the fact that the Board had taken over the marketing of the crop during that period and thus altered the character of previous shipper-jobber relations. Mr. Staples readily agreed to pay discounts for the period in question, but this was not matched by Mr. Chambers, who refused outright to pay them. It should be pointed out that, according to L. R. Stephens, secretary of Sales Service Limited, these discounts, amounting to $760.00, came out of Sales Service funds and not from their clients.[7] Consolidated Fruit which was purchasing the bulk of its supplies from Associated, was not allowed these back discounts, and did not become aware of its loss for this period until July of 1938.

Staples and Chambers met in Kelowna in June, 1938, to discuss the renewal or continuation of the quantity discount to the Western Grocers organization and invited Mr. McCallum of Dominion Fruit to visit the Okanagan to complete the arrangements. At a meeting in the office of Sales Service Limited later in June, attended by Messrs. Staples, Chambers McCallum and McNair, details were completed for discounts to be paid during the 1938-39 crop season. These were incorporated in the following memorandum prepared by Mr. Staples and dated June 28, 1938, copies of which were given to Mr. Chambers and Mr. McCallum:

> "A Quantity Purchase Discount will be paid to all purchasers of fruits and vegetables whose combined purchases, from the Associated Growers and ourselves, amount to two hundred (200) carloads or over of the 1938 crop. This discount was discussed by the officials of the Associated Growers, ourselves and Mr. McCallum in the Sales Service office on June 27th, 1938.
>
> Included in the conversation was an understanding as between Sales Service and the Associated Growers to maintain an even flow of their respective tonnages, Mr. Chambers and Mr. McNair consenting to the further understanding in this connection that they should approach the Consolidated Fruit Co. Ltd., and possibly Macdonalds Consolidated Ltd., for the purpose of securing their buying support to Sales Service and the Associated Growers tonnage.
>
> It was agreed that no discount would be paid on mixed cars of soft fruit, vegetables and apples, and the following schedule was set up:
>
> $25.00 discount per car, on cars containing one or more of the following commodities, PEACHES, PLUMS, APRICOTS, ANY OTHER STONE FRUIT, PEARS.
>
> $25.00 discount on STRAIGHT CARS OF CELERY.
>
> $25.00 discount on cars containing one or more of the following commodities, TOMATOES, CUCUMBERS.
>
> $20.00 discount on cars containing one or more of the following commodities, APPLES, CRAB APPLES AND PEARS.
>
> $17.50 discount on cars containing mixed VEGETABLES.
>
> NO DISCOUNT will be allowed where any of the above five divisions are mixed in the same car.
>
> Method of payment:—Can be arranged according to the wishes of the various purchasers, and to suit the ideas of Sales Service Ltd. and the Associated Growers Ltd."
>
> (Exhibit 69)

Up to 1938 these discount arrangements had been concealed by Western Grocers from most if not all of the branch house managers. The 1938 "deal"

[7] Evidence, L. R. Stephens, pp. 1815-1816.

was made known to the Western Grocers and Dominion Fruit branch houses, and they were given strict instructions to place their orders with Sales Service and Associated Growers, and with the J. B. Lander Company of Kamloops. Purchases from the J. B. Lander Company were to be made direct and the branch houses were to receive earnings from these purchases on a direct basis. Mr. McCallum of Western Grocers viewed this graduated scale of discounts with $25.00 maximum on straight cars of stone fruits as a more satisfactory deal than that of 1936 and 1937, when $20.00 was paid on all cars irrespective of contents. He made his preference known to H. R. Smith, supervisor of Consolidated Fruit Company Limited, Winnipeg, who in turn reported to his head office on July 13.

> "McCallum was of the opinion that his new arrangement would give him more than he received for the past season. I gather that it is $5.00 per car more on straight cars, the same on mixtures and less on vegetables. I could not quite see his point, but he seemed happy to think that he had put something over, and he said that it was their fault if they did not realize that most of the vegetable shipping was over. He claimed that from now on he will have a greater number of cars with the increased brokerage than he will have with the reduced amount."
>
> (Exhibit 164)

Shortly afterwards it appeared that a large number of mixed cars would be shipped to the prairies, on which, according to the arrangement, no discount would be paid. When Mr. McCallum raised this point with Mr. Staples, the latter "volunteered" to change the discounts to $20.00 on all cars, with $25.00 on straight cars of stone fruits. Staples' offer to McCallum was sent by telegram on July 23, 1938 as follows:

> "Find jobbing houses continuing purchase mixed cars and think our present arrangements will prove unsatisfactory. Stop. Have talked Chambers who agrees and we suggest commencing Monday go back last years basis quantity purchase only exception suggest leave straight stonefruit at twenty-five everything else twenty. Stop. If your knowledge situation coincides ours please wire ourselves and Associated confirming this arrangement to go into effect Monday July twenty-fifth but not to apply on cars already shipped. Stop. These will be governed by the existing arrangement." (Exhibit 69)

To the manager of one of the Dominion Fruit houses at Calgary McCallum wrote on July 22:

> "Replying to yours of July 20th with reference to the British Columbia deal.
>
> We are going to carry on as arranged between the Associated Growers and Sales Service. There will be nothing for you to worry about as to what earnings you are going to lose as far as cars are concerned. This was all straightened out prior to your letter, and any commodity that they are unable to give you straight cars of, and they have to make up a mixed car, we will get our allowance just the same.
>
> You can work with Art Lander and make the best buy you can possibly make, but we will get a car allowance just the same. It will be up to them if they sell to you, so just forget thinking about this arrangement, and carry on."
>
> (Exhibit 172)

When the British Columbia Fruit Board again took over the marketing of the Okanagan crop, on October 11, 1938, and established a "one-desk deal", it gave official recognition to the system of quantity discounts which for years had been more or less secretly in effect between certain jobbers and certain shipping agencies. The Board's regulations provided for a graduated scale of discounts, as follows:

> "7. Discounts in respect of quantity purchases shall be allowed and paid by the Company as follows:—
>
> (*a*) To any purchaser who during a season purchases and pays for more than Fifty (50) but not more than one hundred (100) carloads of product, a discount of Ten ($10.00) Dollars per carload.

(b) To any purchaser who during a season purchases and pays for more than one hundred (100) but not more than two hundred (200) carloads of product, a discount of Fifteen ($15.00) Dollars per carload.

(c) To any purchaser who during a season purchases and pays for more than two hundred (200) carloads, a discount of Twenty ($20.00) Dollars per carload.

For the purpose of this clause a carload shall be computed as seven hundred and fifty (750) boxes, and the 1938-39 season shall be deemed to commence on the 11th day of October, 1938."[8]

This formal validation of the quantity discount allowance gave the major jobbers the benefits of the previous rebate system and relieved them from the need to keep these arrangements secret. It has been alleged that the Board's action was unduly favourable to the jobbers, and particularly to the major jobbers, and that the Board, in sanctioning such discounts instead of prohibiting them altogether, was directly influenced by R. B. Staples and A. C. Lander, whose views were said to coincide with those expressed in the Board's resolution. Certainly both Staples and Lander were consulted by the Board, as were other shippers, but the evidence secured is not sufficient to sustain the allegation.

Once discounts became authorized by a Board order a definite advantage accrued to major prairie jobbers. At the same time, the graduated scale of payments made it necessary for smaller jobbers to pool their purchases of British Columbia supplies in order to qualify for the maximum discounts. This practice is particularly evident in Calgary, where independents have been purchasing through Louis Petrie, Limited, in order to qualify at the maximum rate.

Since 1933 Western Grocers and Dominion Fruit have received from Sales Service Limited and other British Columbia shippers $105,412 in quantity discounts, a very substantial sum when viewed as an amount over and above the regular profit made on purchases of British Columbia products. The following table sets out these discounts in detail:

TABLE 26.—QUANTITY DISCOUNTS PAID BY BRITISH COLUMBIA SHIPPERS TO WESTERN GROCERS LIMITED AND DOMINION FRUIT LIMITED, 1933–1938*

	1933	1934	1935	1936	1937	1938	Total
	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
Assoc. Growers	4,095 40	710 55	2,729 11	8,611 36	10,707 88	5,911 37	32,765 67
Sales Service	15 82	18,729 09	940 00	10,560 00	11,787 01	8,872 50	50,904 42
Lander Co. Ltd	3,222 64	60 36	–	–	–	–	3,283 00
McGillivray & Co	4,565 00	4,879 85	–	–	–	–	9,444 85
Unity Fruit Ltd	460 29	–	–	–	–	–	460 29
Okanagan Packers	410 86	–	–	–	–	–	410 86
Cascade Fruit Co	372 84	–	–	–	–	–	372 84
Walters Ltd	–	374 44	–	–	–	–	374 44
Creston Co-op. Fruit Exchange	–	2,276 50	75·00	520 00	409 34	118 27	3,399 11
Long, Allen & Long Ltd	–	215 00	–	335 00	–	366 67	916 67
B. C. Tree Fruits Ltd	–	–	–	–	–	3,080 00	3,080 00
Totals	13,142 85	27,245 79	3,744 11	20,026 36	22,904 23	18,348 81	105,412 15

* Statement furnished by Western Grocers Limited. (Exhibit 204).

The underlying justification for the quantity discount, as a "functional" discount and as a premium for large buyers who are good credit risks, has already been mentioned. Certain special reasons for payment have operated, however, in the marketing of British Columbia fruits and vegetables, and in

[8] Regulations and Orders (Circular No. 109) British Columbia Fruit Board, Oct. 7, 1938 (Ex. 3).

particular in the award of discounts to Western Grocers Limited and Dominion Fruit Limited by Sales Service Limited. Mr. Staples and Mr. Chambers have both contended that it is necessary to give special concessions to the major jobbers in order to keep them interested in Okanagan products and to induce them to push their sale. The chairman of the Fruit Board, W. E. Haskins, was even more impressed by the necessity of " sweetening " the jobber by such means. He expressed himself as in favour of increasing, even more than doubling, the present quantity discount of $20 per car. W. P. Riley, of Western Grocers, stated that the quantity discount was justified because of the increased efforts which the jobbers would make to push the products. He added:

> "You know, when the profit gets down so that we can't get our operating charges, we can't push their goods and we have to go and push something else. It is a selling proposition and if we don't get an adequate margin of profit to pay our expenses, we can't push the Okanagan fruit. You see, from our point of view, I have never considered that the quantity discount deal has been on an equitable basis. For instance, I think if somebody distributes 1,000 cars of fruit he is entitled to a bigger blowback than someone who distributes 500 cars, because he does more for the grower."
>
> (Evidence, pp. 4161-2)

Other arguments advanced by these and others might be briefly summarized as follows:

1. The industry is burdened by an alleged surplus that must be moved, and discounts help to move that surplus and the whole crop.
2. The entire industry is benefited by the Sales Service and Associated Growers agreement with Western Grocers-Dominion Fruit, since the agreement prevents Western from encouraging sharp practices by smaller shippers in soliciting shipments from them.
3. Quantity discounts increase the large jobbers' enthusiasm for the apple " deal " and discourage him from considering other lines to press for sales in preference to British Columbia products.
4. Large scale purchases entitle a buyer to be given a premium for his quantity buying.
5. The absence of control of prices of Okanagan products sold in the prairie provinces compels special arrangements to be made to offset price cutting and other similar practices.
6. The major jobbers are excellent credit risks and sales to them never result in bad debt losses.

The evidence presented has not successfully supported these arguments as justification for the quantity discount practices which have occurred. Discounts were paid on all fruits and vegetables, including those which could not be said to be surplus products. In the case of apples since 1934, the collective marketing system, by spreading releases and shipments, has done much to avoid market gluts in the prairie centres. More important still is the fact that almost every jobber and broker examined on the prairies in this investigation admitted that the fruit wholesaler required British Columbia fruits and vegetables to make up his turnover. Indeed, the jobber needed the British Columbia products as much as the British Columbia shipper required the jobber fo ran outlet. In the four largest prairie cities, the percentage of British Columbia purchases in relation to all fruits and vegetable car arrivals was 39 per cent in 1936, 44 per cent in 1937, and 43 per cent in 1938. To argue that the Western Canada fruit jobber would press the sale of other products and ignore British Columbia apples in the process is to forget the fundamental character of fruit selling and the relatively consistent consumer demand for certain products, such as apples, at certain times of the year.

Any claim that the quantity discounts have been allowed because of lower selling costs on sales to Western Grocers and Dominion Fruit ignores the fact that each Western Grocers and Dominion Fruit branch house purchases according to its needs and upon its own decision to buy; in this respect each branch is an " independent ". Cars are shipped individually and collections are

made from the branches, although in the matter of credit the financial strength of the whole organization is behind each transaction. The same methods are employed in shipments to the Western Grocers-Dominion Fruit houses as in sales to independent jobbers. The large quantity which Sales Service sells to Western Grocers and Dominion Fruit is a cumulative figure, and if 500 cars are sold in the course of the crop season to these houses they are sold as individual shipments, subject to the detailed effort made in connection with any other similar sales.

The argument that the lack of price control among jobbers buying and selling Okanagan fruits and vegetables in the prairie provinces warrants special discounts may have some application from the point of view of the jobber concerned with varying selling prices for these supplies, but it is an unnecessary extension of that argument to suggest that it supports the quantity discount system in general. Since all jobbers now receive discounts under the British Columbia Fruit Board order, and since most had been receiving them even before that order was made, the competitive differential in favour of the jobber receiving these discounts no longer exists unless, of course, the amount is increased secretly. The degree to which prices are maintained f.o.b. the Okanagan appears to be much greater than is generally recognized. According to most shippers an attempt is made to keep prices in line, and individual reductions do not appear to be as frequent as they once may have been.

No positive evidence has been secured to show that discounts paid to the Western Grocers-Dominion Fruit head office since 1933 have stimulated jobber sales of apples or other British Columbia products. The records examined do not indicate that any aggressive selling campaign was instituted when quantity discounts were introduced or restored, or that there was any falling off in sales effort when they were withdrawn. When the 1936 discount was given, pains were taken to see that the local branches, who did the actual selling, learned nothing of it. Cars of British Columbia apples sold to Western Grocers and Dominion Fruit show no increase in 1936-37, the year in which the quantity discount was restored, over 1935-36 when no such discount was paid. Instead a decline occurred. A smaller crop in 1936 explains the decline in part, but the percentage decline in the purchases made in that year by Macdonalds Consolidated, who did not receive the quantity discount, was almost the same as in the case of its two competitors who did receive it. After allowing for the limitations of such data, it appears that discounts paid since 1934-35 by Okanagan shipping agencies to the two large jobbing concerns have had little or no effect on the volume of their purchases of Okanagan apples.

If the quantity discount system did little to alter the volume purchased by Western Grocers and Dominion Fruit it did make it more difficult for other independent shippers to sell to the Western Grocers organization. The position in which such shippers had been placed by the discount deal between Western Grocers-Dominion Fruit and both Sales Service and Associated Growers is illustrated in the following extract from a letter of March 30, 1937, from J. E. Montague, an Okanagan shipper, to the Grant Distributing Company, a Winnipeg brokerage house:—

> "If the Associated Growers and the Sales Service continue their practice of making a head office rebate to Stockton and McCallum, the only way that we will be able to get business from Nash and Western, or from the Stockton Houses is by being competitive. We would not think of this or worry about it if we felt sure that Macdonalds were going to be able to handle our tonnage, plus the increase in the Occidental deal. We know that the Sales Service are very prone to go into some kind of a deal and that the Associated probably feel that they have to do the same in self protection." (Exhibit 166)

It is the growers who ultimately pay the quantity discount, and net returns of the growers have been reduced by thousands of dollars annually on this account. Presumably it would be a wise expenditure for them if it produced substantially increased sales, but this result is quite uncertain. In any case

the growers should know how their money is being spent and under the present Fruit Board arrangements it appears that in respect of quantity discounts they now have this information. When growers entrust to shippers decisions of such importance as this, involving large expenditures of grower funds on which returns are doubtful, it is only reasonable that the shippers should be scrupulously careful to avoid alliances with the interests they are bargaining with, and that they should fully inform their principals of the nature of the deals made on their behalf. It would appear that many of the shipping agencies have been more jobber-minded than grower-minded. Some, much more so than others, have become less conscious of their responsibility to their principals, forgetting that they are not doing business on their own as ordinary buyers and sellers, but are agents in a position of trust. It did not appear to Staples and Lander, for example, that they were going far in the investment deal they made with the Winnipeg jobbing interests; it seemed not much more than a formal recognition of relationships and attitudes that already existed. The same attitude is reflected in the readiness with which Staples entered into the quantity discount arrangement in 1936, his readiness to alter the arrangements to insure maximum receipts by Western Grocers and Dominion Fruit. Mr. Staples does not appear to have resisted the payment of these rebates whenever they were asked for by Western Grocers. On the other hand, the Western Grocers organization, having made their investment in the shipping business, were almost expectant in their attitude toward the receipt of these discounts. Since 1934, Mr. Riley and Mr. McCallum seem to have expected these payments as a matter of course, and none the less so since the investment of Dominion Fruit in the Lander company. Whether Staples would have so readily agreed to McCallum's demands for back payments of discounts or for changes in the agreement if there had been no such investment in the Lander company is a speculative question; but at the least this relationship made it difficult for Sales Service Limited to resist or disappoint the discount expectations of the Western Grocers organization.

4. Participation by Dominion Fruit Limited in C. H. Robinson Company Brokerage Profits

Three developments of importance to the Okanagan fruit industry occurred in Winnipeg in the latter part of May, 1936. Two of these, the Western Grocers-Dominion Fruit investment in the Lander company and the decision to give Western Grocers and Dominion Fruit special quantity discounts on their purchases of Okanagan products, have already been discussed. The third was an arrangement by which the Western Grocers organization shared further in the proceeds of the sales of British Columbia fruits and vegetables to the prairie markets. An agreement was entered into with G. N. Smith, president of the brokerage firm of C. H. Robinson Company Limited, by which Western Grocers-Dominion Fruit were to receive all of C. H. Robinson's net profits less only a net of $2.00 per car reserved to the brokerage company after the deduction of expenses, taxes, etc. The circumstances and general implications of this arrangement throw much light on the position of Western Grocers Limited as the leading merchandiser of British Columbia fruits and vegetables in the prairies, and give added meaning to the investment of Dominion Fruit Limited in Lander Company Limited.

The origin and development of the C. H. Robinson Company Limited and the profit sharing methods employed by the company in its dealing with Nash Simington Company, Limited, and Western Grocers Limited, from 1927 to 1932, have already been referred to; as have the development of the joint office system between C. H. Robinson and Canadian Fruit Distributors, the special relationships between Western Grocers Limited and C. H. Robinson, and the connection between C. H. Robinson and Sales Service Limited.

Despite its reorganization in 1927 as an agency no longer owned by any Canadian jobbing company, C. H. Robinson appears never to have freed itself completely from jobber connections. When Sales Service agreed in 1934 not to employ brokers in its dealings with Western Grocers, and to pay the brokerage to Western, a great share of C. H. Robinson's brokerage business was lost. The company continued to act as agent in connection with imports and other domestic shipments, but the loss of the Sales Service business was a severe blow. The sharing of net profits with jobbers on a 75-25 per cent basis having been discontinued in 1932, C. H. Robinson had no claim on the orders of any group of jobbers. Sales Service employed them and others as brokers for the 1935 season, but the uncertainty of the broker's position and the fact that Western Grocers were trying to get back to the direct buying basis of 1934 appears to have prompted the C. H. Robinson company to work out a scheme by which it would again tie itself to the goodwill of a large jobber. This seems to have been the general reason for the negotiations between C. H. Robinson and Messrs. Riley and McCallum in May, 1936. In his evidence G. N. Smith stated:

> "The smaller B.C. shippers so far as the best of my knowledge goes, were giving that brokerage themselves, they were giving all the brokerage, as well as possibly other discounts, so I asked Western how far they were intending to go with this direct deal. Of course, they had any amount of shippers, so far as B.C. was concerned, and they would like to go back to 1934. Finally, I made a deal with them whereby I would get $2.00 a car net, and they would take the balance of what we made."
>
> "Q. And the Western or Dominion took all the balance of your earnings on business with them?—A. No, on all business. We tried to work it out so it was just on their business, but there again the difficulty was whose business made the profit, and also Sales Service, we wanted to help the situation in B.C. It would have meant keeping everything separate, and figuring out every time we made a profit, so we simply arrived at this basis and said that we got $2.00 net and after that everything, after the income tax and everything, they took the balance, that was the idea we had in mind, when we struck this arrangement." (Evidence, pp. 3754-5)

Thus the profits to be shared by Western covered not only their own purchases, as had been the case from 1927 to 1932, but all sales through C. H. Robinson, whether domestic or imported products, and whether the orders were placed by Western or some other jobbing house.

Participating in the negotiations for this agreement were J. A. Simington, former president of Nash Simington Company, Limited, who still maintained an interest in the operation of the Nash organization in the United States, and Alexander McCallum of Dominion Fruit Limited. According to W. P. Riley, the actual proposal for such arrangements came from Mr. Simington, who at that time was a shareholder in Lander Company Limited through the Finch Investment Company holdings already noted.

Payment of the profits so shared was made by Mr. Smith in 1937 and 1938 through R. B. Staples at Kelowna, instead of directly to Dominion Fruit Limited at Winnipeg. Staples received Smith's cheques in March 1937 and March 1938, and thereupon sent Sales Service cheques, payable to Dominion Fruit Limited, for the identical amounts less exchange. The sums so paid by C. H. Robinson to Dominion Fruit were $6,812.04 for 1936-37 and $8,250.10 for 1937-38. These amounts were deposited in a special earnings account. In 1936 the net earnings of C. H. Robinson Company Limited were $12,257.80, on 2,505 cars; in 1937 they were $12,666.67, on 2,452 cars. By handing the first cheque personally to R. B. Staples in Kelowna, who in turn sent his company's cheque to Dominion Fruit in Winnipeg, the transaction never openly appeared as one between Dominion Fruit and C. H. Robinson. Mr. Smith's explanation of such careful indirection and general secrecy was as follows:

> "Q. What was the reason for your handing this cheque to Staples instead of paying it direct to the Western Grocers?—A. As I said this morning, I wanted to let Mr. Staples of Sales Service see that I was doing all I could—that I was paying on the arrangement. In other words, so that they would have knowledge of it.

Q. You could have written them a letter to that effect?—A. It was just at that time when I was in B.C. I think I may have written him once just saying, 'Here the thing is.'

Q. At the time you handed the cheque to Staples did you explain to him the reason for passing it through him?—A. Yes, I think so.

Q. I think it is fair to assume that you did so, otherwise he would have no idea why you should pass it through him.—A. Yes.

Q. I assume that you told Staples at the time that you wanted it to go through him so that he would know the extent of the cheque and the fact that you were carrying out the original arrangement as you had informed him of it. Is that so?—A. Yes.

Q. Staples has said that he had no idea why you should have handed it to him. That is hardly correct, is it?—A. I can't quite understand that.

Q. I refer to a question and answer of Staples at page 1629 of the transcript. He was asked the question:

> 'Is it fair to say you have no information whatever as to the reason the money was being paid by Robinson to you?—A. No, no information as to why I should be the medium through which the money was passed.'

You say that you explained to him your purpose in passing the money to him?

Q. Mr. Staples already knew about the arrangement—anyway, you say you had told him of it in Winnipeg?—A. Yes." (Evidence, pp. 3765-6)

Against the above explanation Mr. Staples had this to say:

"Q. Were you then, or have you since become aware of the reason for the payment?—A. Not to any greater extent than I was at that time.

Q. What was your understanding then?—A. My understanding was that the C. H. Robinson Company business in Canada depended very heavily on the support of the Western Grocers, and in order to keep that support and to keep themselves operating in this country, they made some arrangement of some kind. I cannot tell you what it was, I do not know the details of it, whereby all of their profits or a portion of them, I cannot tell you which, a portion of them was passed on to the Western Grocers." (Evidence, p. 1629)

"Q. What would be the reason for his passing through Winnipeg with the cheque in his pocket and refraining from handing it to anyone there, but taking it through to Kelowna and delivering it to you?—A. That is something I do not know definitely. I do not see why he should.

Q. The secrecy of the arrangement does make one wonder if there is something more than appears on the surface?—A. I do not mind saying that it was a source of annoyance to me. There is no harm in saying that, at any rate." (Evidence, p. 1635)

Mr. A. McCallum's explanation of the arrangement was as follows:

"Q. Was there any definite consideration agreed to be given?—A. No, not to my knowledge.

Q. Were they just handing you on a platter everything they made over \$2 because they liked the look of you?—A. I guess may be that was it about as much as anything. It would help to get the business. We would lean toward that naturally.

Q. Was it not a term of the understanding that you would give them a substantial portion of your business in exchange for which they would give you all profits over \$2?—A. There was no deal made, to my knowledge, that we would give them anything. They would have to sell us their services. That was all they could expect to go out and do, and that was offered, I guess, on the basis of the C. H. Robinson selling the Sales Service crop. That was where it originated, to the best of my knowledge, because we did work direct with the Sales Service the previous year, I think. I think it was the previous year." (Evidence, Exhibit 219, p. 2)

"Q. On the face of it, Mr. McCallum, the transaction was carried out in a manner that would indicate that those who had to do with it were ashamed of something. Now, what was back of it all?—A. I don't know any other reason than that they didn't want the world to know about it." (Evidence, Exhibit 219, p. 5)

More information on the nature of these arrangements between Dominion Fruit and the C. H. Robinson Company, and the reasons for them, is given in the evidence of Mr. W. P. Riley:

"A. . . . He (J. A. Simington) said, 'I think we (C. H. Robinson Company Limited) have got to quit. We want an outlet for our American shipping house. Unless you are prepared to favour us a little bit more, throw some business our way, we will have to discontinue.' He said to me, 'I am not an executive and I have retired, but I am an interested shareholder and I would'nt like to see any of these companies discontinue. You can throw more business our way, can't you.' I said

> that we could. I didn't see why we couldn't. It was just a question of preference. I said to him, 'What have you got on your mind?' He said, 'Well, what would you think of the proposition that we would run the C. H. Robinson Co., and we would take for our earnings—we would take all expenses out and we would take $2 a car for our profit and you would get the rest?' We considered that a while and we finally said, 'Let us try it and see how it will work.' I talked to McCallum about it and eventually he and Gordon Smith got in touch with each other and consummated the deal and my memory is that that is exactly the deal." (Evidence, Exhibit 217, p. 2)

The effect of this agreement was to have the broker pay an outright gratuity (for which there was no consideration according to Mr. McCallum) of over $14,000 to Dominion Fruit for the two years 1936 and 1937. The ability to impose such an arrangement illustrates again the strong bargaining position of Western Grocers and Dominion Fruit on the prairie market, in its dealings with brokers as well as shippers. Most important, however, is the significance of this agreement in the light of the other arrangements which were initiated in May, 1936. By proposing to establish a cash buyer in the Okanagan Valley, Western Grocers had secured an interest in the Lander Company, and thereby an interest in a group of Okanagan Valley shipping plants. By threatening to return to the "direct deal" with B.C. shippers, they acquired substantial control over the C. H. Robinson company. In addition to the resulting payments there were the dividends received by the Western Grocers organization from the Lander Company. These dividends were, of course, legitimate returns on their investment, but when they are added to the monies received by way of discounts and brokerage profits it seems that the Western Grocers organization was receiving, upon the sale and shipment of British Columbia fruits and vegetables, very substantial sums above their regular trading profits. These three transactions of May, 1936, originated in the pressure which was exerted by Western Grocers directly or indirectly. Such pressure was made possible because of the company's strength as the largest single buyer of British Columbia fruits and vegetables, a strength which was used to exact the largest possible return for the handling of these products.

IV. THE ALLEGED COMBINE OF PRAIRIE JOBBERS

Investigation has been made into the second alleged combine, where it was charged that the three major fruit jobbing companies in the prairie provinces, Western Grocers Limited, Consolidated Fruit Company Limited, and Macdonalds Consolidated Limited, have combined to set and enhance resale prices of fruits and vegetables, to depress prices to British Columbia growers, and to affect detrimentally independent fruit wholesalers. These three concerns, as described in Chapter II of this report, control approximately three-quarters of the distribution of British Columbia fruits and vegetables in the prairie provinces.

1. Local Pooling Operations and Price Arrangements

In each of the larger prairie cities the jobbers have for many years used a purchasing system known as "pooling". Under this arrangement, two or more jobbers, because of friendly relations, corporate connections, or the location of their warehouses, agree to buy jointly certain commodities. Usually these products are imports of straight cars of head lettuce, Mexican tomatoes, sweet potatoes, or sometimes British Columbia berries. Generally pooling does not include British Columbia apples or other major products.

The stated object of pooling cars is to avoid a surfeit which would result from overbuying, to distribute the costs of freight and handling charges among two or more jobbers, and generally to do collectively what any one jobber would find difficult at certain times and with respect to certain products, namely, to purchase on a car basis. It is the opinion of the major jobbers, and many of the independents, that in these cases pooling serves to "stabilize" the market by keeping supplies within the capacity of the local market.

In the opinion of most operators, the total volume of fruits and vegetables sold in the prairie markets is affected by the pool system because by purchasing on a "planned" basis, and by deliberately limiting the total supply of products so as not to surfeit a market, the volume of such products, in the long run, is reduced. At the same time, it is argued that the reduction in volume is offset by the benefits of uniform supplies for which there is a known outlet. The jobbing trade and the general public, it is argued, are thereby protected against unstable market conditions. Counsel for Consolidated Fruit Company Limited has submitted:

> "it would be impossible to conduct the fruit and vegetable business without jobbers participating in shipments. Witnesses emphasized that the benefit of such pooling arrangements accrued to the producer and consumer alike by maintaining a high quality of fresh commodities which encourage increased consumption and at the same time the market is sustained on behalf of producers. Were all jobbers to bring in their own supplies, the market would be glutted and the losses would render it impossible to continue to carry those lines with the ultimate result that consumers would be without supplies and the effect would be disastrous to the producers."

This appears plausible despite the fact that no evidence was presented to show that market gluts had occurred when pooling arrangements broke down. If no pooling arrangements could be made, individual jobbers would bring to the market only such supplies as they believed could be sold. Having through experience a knowledge of their outlets as well as of their competitors' possible sales, they would soon learn the more or less exact point at which their purchases should be limited. Doubtless the pooling method simplifies this problem and reduces the cost of certain types of goods, but it may also have the effect of so

limiting the supplies of certain products that, instead of a glut, temporary and relative scarcity will ensue. While the benefit to the jobber from the pool system is evident, the corresponding advantages to the purchasing public as well as to the domestic producer of fruits and vegetables are not so clear. The decisions of one or two influential pool members could, at any time, reduce the volume of a given product shipped to a market, a situation which would not occur if there were enough independent competition. But in a market dominated completely by major jobbers, e.g., Edmonton, the disadvantage from the consumer point of view is manifest.

The percentage allotted to each participant is usually calculated on the relative volume of business transacted in the city by each. Frequently the car is shipped to one of the houses, which proceeds to distribute from the car according to the agreed percentage. A minimum handling charge—$10 in the case of a particular Calgary pool—is frequently paid to the jobber charged with distributing the shipment.

At the meetings where pool purchases are arranged, discussions also take place on prices and jobber margins. Certain prices are suggested and a loose agreement as to the desirable margin is often reached. However, most of the witnesses in all five cities have argued that the "agreed" prices do not really constitute agreements in any binding sense of the term; rather they are only standards by which it is believed jobbers should be guided, and are therefore but "marks to shoot at." This condition in the main prairie cities will be analysed in more detail.

The pool in Edmonton, where there is now only one independent jobber, was composed of seven firms, whose percentages were as follows:

	Percentage
Royal Fruit (Western Grocers)	19
Scott Fruit (Consolidated Fruit)	19
National Fruit (Consolidated Fruit)	16
Brown Fruit (Western Grocers)	16
Western Grocers Limited	10
H. H. Cooper Limited (Western Grocers)	10
Macdonalds Consolidated Limited	10
	100

Pool discussions followed the usual pattern and were concerned with prices and related matters. Macdonalds have withdrawn from active participation in the pool but the practice has been to have the price lists issued by the other jobbers forwarded to Macdonalds the day following the jobbers' weekly meeting. The local manager of Macdonalds does not appear to have entered into any general agreement on prices, and had specific instructions from his company's president not to participate in any price agreements. On occasion, however, the local house appears to have wavered from this independent position. This is indicated in the following memorandum of September 11, 1936, from the local manager of one of the Consolidated Fruit houses to his general manager:

"H. C. STOCKTON

I thought you would be interested in knowing that the boys are feeling in a very receptive mood to some arrangements about increased profits.

We had a meeting to-day which was attended by Macdonalds, the Western crowd, Essery and myself. It was felt that this was a good time to set out the MacKintosh prices and a start has been made. Prices were set that will allow us a minimum of 25c. per case on all grades of MacKintosh, city and country. A committee consisting of Campbell (Macdonalds), Giles (Western), Manson (Brown) and myself was appointed to handle the price situation each Wednesday and it was decided that further items would be added each week. . . .I think everybody is pretty sincere and I am looking forward to seeing the price on MacKintosh's maintained . . .

H. HARRISON." (Exhibit 183)

The jobbers maintain that in Edmonton, as elsewhere, the prices agreed on are only guides, but there is evidence that such prices are maintained more effectively in Edmonton than in the other prairie cities. The limited nature of independent competition at this point may have something to do with this condition.

The evidence indicated that Western Grocers Limited was concerned with the maintenance of a comon price structure among all Edmonton jobbers. In one case Mr. McCallum of Dominion Fruit Limited made specific proposals from Winnipeg covering sales to smaller independent operators employing trucks as follows:

> "The arrangement between all should be one jobbing price to trade of this nature. If that price is maintained, the trucker will not be able to sell underneath us... If you jobbers do not get together on a fair markup, the result will be that you will have some other jobber opening up in Edmonton." (Exhibit 180)

One Calgary pool of eight firms provided for the following percentage allocations:

	Percentage
Plunkett & Savage (Western Grocers)	20
Western Grocers Limited	7
National Fruit Company (Consolidated Fruit)	16
Scott Fruit Company (Consolidated Fruit)	15
Macdonalds Consolidated Limited	12
N. A. Barker Limited (Independent)	12
Calgary Fruit Limited (Independent)	9
T. J. Styles and Company (Independent)	9
	100

Although Western Grocers and Consolidated Fruit Company dominated the pool, the three independents were strong enough to obtain 30 per cent of pool-car importations. The jobbers meet weekly to consider prices and problems arising out of pool activities. Even products individually bought, such as British Columbia apples and pears, have been subject to discussions on prices and margins. Similar explanations of the nature of the discussions were given by branch managers in Calgary, as illustrated by the examination of Victor S. Ockenden, manager of the Scott Fruit Company, a Consolidated Fruit Company house:

> "Q. Was not one of the purposes of those weekly meetings to set prices for the following week?—A. I don't think there was any chance of that idea, Mr. Bird. We used it more as a guide; as far as making the prices rigid went, I don't think the idea was in anybody's mind that that was possible.
>
> Q. Apart from rigidity or otherwise, is it not a fact that at these weekly meetings prices for the following week are discussed and arranged?—A. They were discussed to a certain point. There were always some exceptions because some handled commodities that others didn't.
>
> Q. Dealing particularly with Okanagan fruit, during such time as Okanagan fruit is sold on the market, are prices set by agreement?—A. No. not altogether. We discuss prices, but there is no set price, because we split up our pools.
>
> Q. I understand, or I interpret you to answer that you do discuss price and you do agree on resale prices, which is not necessarily a binding agreement. Is that the situation?—A. That is the idea." (Evidence, pp. 2542-3)

Mr. J. A. Maclean, manager of United Brokers, Calgary, stated that, generally speaking, salesmen from the various Calgary jobbing houses are supposed to stay very close to the price lists issued by their respective firms. A comparison of these price lists, for three typical weeks in the winter of 1938-39, indicates that there is not complete uniformity even in the asking prices and even as between two branch houses of the same company. Macdonalds Consolidated Limited do not attend these price discussions in Calgary, although they participate in pool supplies. Witnesses testified, however, that Macdonalds are informed of the prices discussed at such pool meetings, but that they give no assurances that such prices will be maintained. On the whole, competitive conditions in

Calgary as well as the nature of jobber meetings suggest that, while discussions take place and some general understanding is reached on resale prices, the degree of independence retained by the various jobbers participating in these discussions is sufficient to give any such arrangements a very tentative character.

A buying pool of six fruit houses has existed in Saskatoon since 1937 and includes Macdonalds Consolidated. The Saskatoon situation is very similar to that of Calgary; the results of the price discussions seem very indefinite with wide discretion reserved to all participants. The branch house of the Consolidated Fruit Company had not joined the pool at the time of this inquiry, but this appeared to be entirely for local and personal reasons.

In Regina certain products are purchased through a pool of six firms. This pool frequently is suspended because of disagreement among its members. At such times two-way or three-way pools arise to meet immediate needs. Both Consolidated branch houses have pooled with H. G. Smith, Limited, an independent firm until 1938 when it was purchased by Macdonalds Consolidated Limited. No independents are now in the pool and British Columbia products, except strawberries, are pooled only infrequently. The six member pool is composed as follows:—

	Percentage
Scott Fruit Company and National Fruit Company (Consolidated Fruit)	32·5
S. & M. Wholesale and Western Grocers Limited (Western Grocers)	32·5
Macdonalds Consolidated Limited	20
H. G. Smith Limited (Macdonalds Consolidated)	15
	100

The weekly jobber meetings are reported to include little in the way of price discussions, except as respects special pool purchases; and no price lists are issued. Here, too, Macdonalds Consolidated have refused to make commitments on prices or to agree to maintain any suggested price. Regina is regarded as a very competitive market. The evidence suggested that the greatest pressure for price agreements on oranges and Okanagan apples came from the manager of the Scott Fruit Company. The general conclusion is that the price arrangements made weekly at the meetings had little effect upon practices in the district and led to no binding arrangements.

In Winnipeg the buying pool comprises the following seven firms:—

Western Grocers Limited,
Rogers Fruit (Western Grocers),
Sterling Fruit (Western Grocers),
Bright, Emery (Western Grocers),
Scott Fruit Company (Consolidated Fruit),
Cran, Mowat & Drever Limited (Independent),
Rusen, Solomon & Company (Independent).

Rusen, Solomon & Company does not join in the purchase of certain commodities. Here again in the case of British Columbia supplies only certain specialized products are occasionally bought, such as cantaloupes, cherries, strawberries and raspberries. The major Okanagan products, such as apples and pears, continue to be purchased individually and outside the pool. Macdonalds Consolidated and its second Winnipeg outlet, Continental Fruit Company do not share in the pool purchases, except occasionally in the case of imported products. At the same time two small independent fruit operators, Crescent Fruit Company and United Fruit Company, have not been taken into the pool. Weekly meetings, discussions on margins, agreements to mark up commodities to a certain resale price, and the shaving of that price in individual cases, have resulted in price agreements, if any, being carried out only in a very loose way. One or two witnesses, however, indicated that

sometimes the price and margin discussions on apples were of a more positive character than had been the case on other products. To this extent the Winnipeg arrangements correspond with those observed in Edmonton.

The evidence of J. W. Wilde, the Winnipeg branch manager of Continental Fruit Company, which Macdonalds established in 1937, leaves no doubt that, while frequently participating in conversations relating to margin and price problems, he had no authority to enter into any agreements with regard to prices. A branch manager of course would have authority to raise or lower his price to meet the generally prevailing level at which his competitors were operating. Mr. Wilde said:—

> "Q. You yourself would have had authority to change to 15 cents?—A. Yes, I could have done that.
>
> Q. But you didn't have authority to agree with the other companies?—A. No.
>
> Q. What instructions have you from your own company to that effect—that you must not agree?—A. I have been instructed very emphatically that I have nothing to do with the policy of our business.
>
> Q. What about instructions from your company with respect to agreements on price, have you definite instructions on that?—A. Yes, we have had instructions that we were not to agree on prices.
>
> Q. Written instructions?—A. Yes. (Evidence, p. 3682)

Thus the situation in Winnipeg appears to be very similar to that in the other cities surveyed.

The pooling system must be distinguished from attempts to establish common prices. The pooling system of buying appears to have developed in part because of the small total demand of particular markets for certain products; in itself it may or may not be innocuous. It incidentally involves regular meetings and collective action which give the opportunity for further price discussions and common action to fix prices. Thus while in practice the pooling system can lead to price agreements this need not be so. Generally the branch managers made the pool arrangements and were responsible for them, but it was the policy of Western Grocers head office to encourage them and to intervene when necessary. The attitude of Macdonalds Consolidated toward pools was different from that of the other jobbers and not consistent in every prairie city. In three cities they did participate in pools and in two, the larger ones, they did not. In all these cases British Columbia supplies were a minor part of any joint operation.

It is also true that the branch managers of the Western Grocers organization and of the Consolidated Fruit Company undertook to make price agreements or understandings, and there is evidence to show that the general officers of these companies were willing, indeed anxious and pressing, to make price agreements directly and that this was head office policy. The following excerpt from a letter of July 25, 1934, from A. McCallum of Western Grocers to H. R. Smith of Consolidated Fruit, illustrates this:—

> "We believe we have always been ready to sit down and talk over prices to try and maintain a reasonable percentage of profit and will be glad to do so whenever it is possible." (Exhibit 165)

In contrast, Macdonald's head office would not talk price agreements directly and discouraged active participation in local agreements. This is borne out by the following letter of March 17, 1938, from L. W. Raley, president of the company, to the local managers:—

> "I have recently talked with most of you on the dangers of agreeing with our competitors on the re-sale price of fruit items.
>
> I have been thinking further about this matter since I finished the trip, and I am very definitely convinced that we should not agree on prices with anyone who is not operating on the same basis as ourselves. By that I mean that we cannot hope to maintain our volume on what might be termed the catalogue method against a

personal call of a traveller if we ask the same price—and for us to even attempt to do so is ridiculous and dangerous. If we cannot get into pool cars without agreeing on the price, then we must bring in straight cars, working with other branches where practicable.

We must not ask or agree to ask the same price as the jobbers who travel salesmen and give longer term credits than we do.

For those branches that have been more or less following the policy of agreed prices, please write me advising what plan has been decided upon for getting away from the practice, and what, if any, start has been made as yet to do so." (Exhibit 181)

In one reply to this, T. G. Campbell of Edmonton wrote on March 21, 1938:—

" . . . I immediately contacted the local jobbers and advised them that Macdonalds would no longer go into any agreement with them on prices." (Exhibit 181)

There is little doubt that, with the substantial exception of Macdonalds Consolidated, there was the will to make price agreements, and that the policy failed of general adoption at least as much because of the nature of the commodities handled as because of the lack of measures of enforcement and the uncertain position of the Macdonald company.

2. Pressure Upon Independent Fruit Jobbers

Pressure to eliminate independent fruit jobbers, if it occurred, would ordinarily include one or more of the following types of action: interference with an independent's source of supply, refusal to sell to an independent, undercutting the price of given commodities to make sales difficult for independents, and maintenance of price agreements.

It was stated by fruit wholesalers that refusal to permit a jobber to participate in operating pools would interfere seriously with his ability to handle certain products. Because British Columbia supplies are not usually purchased through pool arrangements, an independent jobber need not be concerned about any pool arrangements for Okanagan apples and pears. For imported commodities such as lettuce and Mexican tomatoes, and certain British Columbia products such as strawberries, the effect of being denied pooling privileges could be serious. About half of the fruits and vegetables going into Calgary, for example, in the years 1936 to 1938, were from British Columbia. Under present conditions an independent operator depending upon imported products for about half of his turnover of fruits and vegetables would need to participate in pools to obtain supplies at competitive prices.

Certain major jobber branch managers and head office executives indicated they knew of no attempt to exclude fruit wholesalers from sharing in pool purchases. Instances were found, however, where exclusion did occur, as in the case of N. A. Barker Limited, a Calgary independent operator. In September, 1934, Barker was informed by another independent, acting on behalf of the pool, that his company would no longer be afforded general pooling privileges. The Barker company was able to continue to operate successfully. No concerted effort was made to undercut the price at the same time, and he was able to obtain his own supplies. It was suggested in Calgary that when an independent jobber became very effective in his local market he was asked to enter the pool by the major jobbers. This view was expressed by E. J. Gilliham of Calgary Fruit Limited, an independent. The advantages to an independent of being permitted to join in pool buying were stated by Mr. Gilliham to be:—

"A. . . . there were a few of the trimmings we were not able to get. By going into the pool we would have steady supplies, and that is the way we looked at it.

Q. What were the trimmings you were unable to handle?—A. Bananas, tomatoes and that type of merchandise, where a car of merchandise is too heavy for one jobber to swing." (Evidence, pp. 2292-3)

Calgary Fruit Limited for many years thus operated on its own, unable to purchase "fancy" supplies until it was permitted to share in the pool purchases, or at least not able to purchase such products on the same favourable car price basis as that secured by the pool buyers.

The second method by which the sources of supply to independents may be interfered with is by putting pressure to that effect on agents selling specialized products. The right to sell Sunkist oranges, a brand with a continuous demand, rests with agents of the California Fruit Growers' Exchange, who are established at various points in Western Canada. That pressure for this purpose had been brought to bear on the district manager of the California Fruit Growers' Exchange for Alberta, C. W. Stevens, is clear from his evidence regarding his sales to the Merco Wholesale Limited, Edmonton. Such attempts to prevent the sale of one brand of oranges may seem unimportant because this is only one of many brands available to independent operators. Where, however, consumer demand for a particular brand of an important commodity has become well established, wholesalers must be in a position to meet the requirements of the retail trade. To have such supplies withheld would be a serious handicap. To have them withheld because of pressure brought to bear by a combination of competitors might lead to serious legal consequences for those responsible. It was not indicated that the pressure in the case of sales to Merco Wholesale Limited came from concerted action.

In Edmonton the independent jobbers have almost completely disappeared. In recent years the Rex Fruit Company, Growers Fruit Company, R. L. Sutherland, and the Ross Fruit Company, ceased to operate. Only the Merco company continues to function as an independent in the market. No clear reasons were given for the disappearance of the Edmonton independents. Generally it was explained as lack of capital with which to compete successfully against the three major organizations operating in Edmonton, but such an explanation means little, for lack of capital is often merely a symptom, not a cause. Illustrations are available pointing to difficulties confronting independents in obtaining pooling privileges in Edmonton. Although the Edmonton situation reveals that major jobbers have used sharp and censurable methods at times in their dealings with regard to independents, the evidence secured did not establish that such methods were the result of actual or tacit agreement.

In Regina there are two independent fruit and vegetable wholesale concerns, of which the larger is McBrides Limited, a company controlled in part by members of the Nash-Finch Company in North Dakota. McBrides have a connection with forty-six retail units in Moose Jaw, Regina and southern Saskatchewan. Mr. A. Mitchell, president and general manager of McBrides, stated that there had been no attempt by other jobbers to interfere with the sources of his supply of Okanagan products.

The Winnipeg market, too, has witnessed a decline in recent years in the number of independent fruit and vegetable wholesalers. The most recent important change has been the purchase in 1937, by Macdonalds Consolidated Limited, of the business of Provincial Produce Company, a large and aggressive fruit and vegetable jobbing organization now re-named Continental Fruit Company. In Winnipeg the leading independent operators, Cran, Mowat & Drever, and Rusen, Solomon & Company, have had no difficulty in obtaining British Columbia supplies in recent years. One of the small independents, Crescent Fruit Company, has complained of difficulty in obtaining a share in given pools on certain supplies, but the refusal does not appear to have resulted from joint action on the part of major jobbers or from any desire to eliminate the Crescent Fruit Company from business.

In general it has not been found that questionable methods of this type have been employed by major jobbers, outside of instances in the Calgary and Edmonton markets, and at these points there is little or no evidence of concerted action.

3. Special Deals and Discounts

The origin and development of special rebates and discounts, and the formalization of this practice into the present quantity discount method, have been discussed earlier in this report. The question of whether the three major jobbing organizations have in any way collaborated in requiring the Okanagan Valley shippers to pay such discounts may now be considered.

As early as 1933 the question of discounts to major jobbers was canvassed fully at the meeting in Winnipeg, already noted, in which leading Okanagan Valley shippers, as well as Messrs. Riley and Stockton, took part. The failure of this conference to include Macdonalds Consolidated did not, however, prevent the receipt of special discounts soon thereafter by the Western Grocers organization and by Consolidated Fruit from almost every leading fruit and vegetable shipper in British Columbia. It has already been shown that since 1933 Western has received $105,412.15 in special discounts from various British Columbia shippers, and that Consolidated Fruit Company Limited has received $75,626.43. Not until the crop season of 1937-38 did Macdonalds Consolidated commence to receive discounts, and from January, 1938, until November, 1938, the company received a total of $11,320.00. The evidence does not show that the three major jobbers, through head offices or through branch managers, have participated in any joint effort designed to require Okanagan shippers to pay them special discounts. Special relations in this respect did exist, however, between the Western Grocers-Dominion Fruit organization and Consolidated Fruit Company Limited.

A. McCallum of Dominion Fruit Limited and H. R. Smith of Consolidated Fruit Company consulted each other on many occasions regarding discounts to be received from British Columbia shippers. How far their common views on these discounts led them is indicated in several letters exchanged in the winter of 1937-38 concerning the purchase of a large number of cars of British Columbia apples by the Dominion government for relief purposes. Both McCallum and Smith were of the opinion that discounts should be paid even on such cars, since these shipments cut into the sales of regular jobbing agents operating in the districts in which the relief distribution was made.

Mr. McCallum stated that he could not recollect having consulted either Smith or Stockton on any of his firm's quantity discount deals. Smith's letters to Stockton indicate, however, that just as Western Grocers-Dominion Fruit and Consolidated Fruit Company Limited acted together in the matter of pooling and discussed such questions from time to time, similarly there was a common understanding with regard to the receipt of quantity discounts on Okanagan fruit and vegetable shipments. At the same time the evidence does not show that the demand for such discounts or the arrangements for their receipt were the result of any tacit or actual agreement between these two organizations.

Reference has been made already to certain "direct deals" effected between jobbers and shippers, whereby the services of prairie brokers, representing Okanagan shippers and growers, were not utilized and the brokerage fees were added to the returns of the jobbers. No evidence has been obtained showing that the three major jobbers in Western Canada have in any way colluded in the matter of arranging for "direct deals" with Okanagan Valley shippers. While it cannot be said that there has been collaboration on the part of Macdonalds Consolidated Limited, Consolidated Fruit Company Limited and Western Grocers Limited with regard to the receipt of brokerage payments, the practice indicates again the powerful position held by the largest western jobbers in their relations with British Columbia shippers.

V. CONCLUSION

This report, concerned with two alleged combines in the wholesale distribution of British Columbia fruits and vegetables in Western Canada, has presented an outline and analysis of the evidence and material secured in the course of an extensive investigation. Some of the main points may now be briefly summarized.

Although the perishable nature of fruit requires quick marketing, with its attendant anxieties to producer and dealer, this factor should not be exaggerated in explaining trade practices. In attempts to justify courses of action which militate against growers on the one hand and consumers on the other, too much weight is frequently given to the existence of a surplus in certain British Columbia fruits, particularly apples, and to the contention that this alleged surplus is primarily responsible for marketing difficulties. Associated with this is the view that the use of some sub-marginal land for fruit growing has handicapped the industry as a whole. This consideration was stressed in the Sanford Evans report of 1931, and to some extent is always true of agricultural production. The validity of this view is not examined extensively here, and doubtless an extensive technical survey of the present fruit growing areas in British Columbia would give valuable and useful information.

In the marketing of British Columbia fruits and vegetables, some fruit shippers and prairie fruit jobbers have resorted to practices undesirable either because of their adverse effects on the producer or the consumer, or because of their general failure to satisfy reasonable standards of business conduct. These have been discussed in preceding sections of this report. For example, the absence of comprehensive audit systems for grower pools, to insure the exactness of returns to the grower, exposes the primary marketing system to some suspicion and criticism. The reluctance of growers to invoke the provisions of the Sales on Consignment Act, which provide for such audits, is indicative less of inertia than of diffidence in challenging shipping concerns operating in the producing areas of British Columbia.

The special rebates and discounts given by many shippers to wholesalers in Alberta, Saskatchewan and Manitoba, in order to induce increased purchases, have no economic justification and find little support in the claim that payments of this type have served as sales stimulants. The main significance of such rebate payments has been to reveal the strong bargaining position of leading wholesalers in relation to the British Columbia shippers and producers. At the same time, much of the evidence presented on this point contained the inference that if British Columbia shippers resisted these payments they would not be compelled to pay them. The assertion of an attitude of independence would restore a measure of equality in the bargaining relations of wholesalers and producers.

Payments of condition and policy claims and payments for floor stock protection were found to have been made much less frequently than appears to have been believed throughout the producing areas, and to have been much less extensive than prior to 1932 when the Nash Simington Company Limited dominated the industry throughout the western provinces. These claims are still subject to definite abuses and it would be to the advantage of growers, shippers and jobbers if definite "claim" principles were established and accepted by all parties. Some evidence was presented concerning "overages" by the Okanagan Valley shipping houses. A "pack-out" system, accurately accounting for all packed and unpacked fruits brought to the packing house, would offset the impression now prevalent among many growers that shippers, through the

taking of overages, have deprived producers in many cases of their proper returns. The extent to which over-grading and extravagant packing exists in the Okanagan need not be analysed here, but as a cause of added fruit costs it is a subject worthy of careful study by the industry.

Concerning the "direct deal" method of jobber purchases, involving the elimination of the prairie broker and direct buying by jobbers from shippers, it remains only to point out that the direct deal system provides no protection for growers and shippers where sales are f.o.b. the point of receipt. Where sales are f.o.b. the point of shipment, it does eliminate condition claims and floor stock protection demands. These latter advantages are offset by the resulting elimination of the broker, and, if carried to the extreme, his disappearance from the prairie markets. Under present conditions such a development would not be to the advantage of the British Columbia producer. The grower requires some representation at distant and important markets to keep shippers informed of market conditions and to provide a continuous intelligence service for the efficient distribution of the growers' products. The method of the full-time representative, such as that used by the California Fruit Growers' Exchange in Western Canada, is possibly the method which ultimately will be established by British Columbia fruit producers. Meanwhile brokers serve as adequate and important intermediaries between shippers and jobbers, and it appears they should not be permitted to disappear by the employment of the "direct deal". The threat of a "direct deal" has also compelled brokers who wish to prevent a loss in revenue to agree to jobber participation in a direct share in their profits. The payment since 1936 of a share of the net profits of C. H. Robinson Company Limited to Dominion Fruit Limited was the result of an intimation that Western Grocers and Dominion Fruit might cease to employ a broker in its purchases of British Columbia supplies. Such payments illustrate further the power of the largest western wholesalers in their relations with British Columbia fruit and vegetable shippers and their prairie brokers.

The general atmosphere of suspicion which appears to be common throughout the fruit and vegetable industry in Western Canada doubtless had its origin in the malpractices of the Nash organization. Despite the disappearance of the Nash company from Western Canada, this atmosphere has in some degree continued, and has its clearest manifestation in the lack of confidence of British Columbia producers both in the wholesale distributors and in some British Columbia shipping concerns. The disclosure of the relationship between Western Grocers Limited and Sales Service Limited, an alliance of jobber and shipper, together with the undesirable business practices referred to, accentuated this atmosphere.

The co-operative movement in the Okanagan Valley grew out of the need of growers for common packing, shipping and marketing facilities. The failure of the movement to maintain its dominant position after 1925, and the rise of independent shippers, were the result of many factors which need not be analysed here. It has been evident that the co-operative shipping agency, Associated Growers of British Columbia Limited, has developed an attitude toward prairie province jobbers similar to that of its great rival selling agency, Sales Service Limited. The resulting concurrence of attitude on the part of these two organizations toward the larger wholesalers, as in the matter of quantity discount, and generally their joint activities in relation to the three major jobbers, suggest that Associated Growers has developed a jobber point of view considerably at variance with the traditional attitude of a co-operative organization facing large and dominant wholesalers. Doubtless, the management of Associated Growers believes such conduct to be in the best interests of its local members, or possibly it is not conscious that it has arrived at a position of this nature. The fact remains that there was little resistance by this co-

operative organization to the special demands for rebates and discounts made upon it by Consolidated Fruit Company and the Western Grocers-Dominion Fruit organization.

The process of jobber concentration described in the earlier chapters exposes the fruit grower to many types of pressure against which, if unorganized, he appears to have little effective defence. Limitations upon supplies purchased, attempts to compel shippers to make special arrangements, the depression of prices due to local over-shipment, all of these were related to the unorganized position of British Columbia fruit and vegetable shippers. The ultimate effect was to lead growers to ask from the legislature a measure of administrative supervision of the marketing of fruits and vegetables which would balance the organized position of prairie jobbers with a similarly organized grower and shipper group. The British Columbia Fruit Board has as its members duly elected grower representatives and, as they function pursuant to provincial legislation, it does not come within the scope of this report to assess either the merits of any individual appointee or the marketing policies for which they are responsible, except as these relate to, or impinge upon, the question of the alleged combine. But certain general observations may be advanced.

It was suggested in evidence that the initial prices set by the British Columbia Fruit Board were, as a rule, relatively too high and then had to be reduced rapidly, to the disadvantage of those who purchased supplies earlier in the season. Little evidence was found to support this allegation. While the British Columbia Fruit Board has the power to fix and maintain prices within the province, constitutional limitations have prevented its extension to the prairies. There is, however, a not inconsiderable body of British Columbia grower and shipper opinion, supplemented by jobber opinion on the prairies, which believes that administrative price-fixing of supplies shipped from British Columbia to the prairie provinces would do much to eliminate the undesirable trade practices related earlier. It was said, further, that such an administrative price-fixing system would give " stability " to the industry and make for a continuity in prices as well as in grower returns. Without analysing this broad question it may be observed that the dangers involved in comprehensive governmental price-fixing within a competitive economic system have been demonstrated by recent experience in a number of countries and are becoming reasonably well known in Canada.

Another danger to the public which must be made clear is the possibility of a combination between growers acting as a unit and distributors acting as a unit for the purpose of exploiting the consumer through smaller volume and higher prices. This is a potential danger but it is clear that willingness to pursue such a course is not lacking among some western fruit growers, shippers, and distributors. It would be unfortunate if the present public good-will towards the grower were sacrificed, and the many sound measures possible to further the fruit growing industry imperilled, by the development of any such monopolistic combination which would exploit the western fruit consumer.

The prosperity of the British Columbia fruit industry necessarily is closely allied with general business conditions in Western Canada. Without overlooking the importance of exports to the United Kingdom, it is the purchasing power of the western provinces which will go far toward determining prices received by growers for a given fruit crop. One of the most important aspects in marketing British Columbia fruit on the prairie provinces is the reduction in the number of outlets now available to British Columbia products. They have been narrowed down to three great fruit wholesale organizations and a very small number of independent operators. This narrowing of the channel for British Columbia supplies in the prairie market underlies much of the pressure in British Columbia

for the establishment of governmental agencies charged with regulation of production and marketing. In the last analysis the growers' marketing problem is one of "traffic"—how best to move on to the consumer with speed, consistency and a minimum of cost, the increasing volume of apples, pears and other fruits being produced in the Okanagan Valley and other areas of British Columbia.

1. The Alleged Combine of Prairie Jobbers

Briefly stated the Combines Investigation Act provides that any actual or tacit agreement entered into by two or more persons which has or is designed to have the restrictive effects set out in the Act is offensive if the combination resulting from the agreement has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or others. Section 498 of the Criminal Code is of somewhat similar import. Interpretation of this legislation has come through a series of court decisions which need not be reviewed here. It has been held in these decisions that it is not necessary to the commission of an offence that an agreement shall have been entered into by all those engaged in a trade or industry, or that a complete monopoly of the purchase or sale of a product shall have been effected. Nor is it necessary that actual written agreements shall have been drawn up and signed by the parties.

Two questions arise out of the pooling practices observed in the Alberta, Saskatchewan and Manitoba markets. First, to what extent was there any firm agreement on the pooling of certain supplies and, second, to what extent did any such agreements among wholesale concerns prevent or lessen competition in the purchase, sale or supply of British Columbia and other fruits and vegetables in Western Canada, to the detriment of the public. The measure of real agreement on pool purchases included all three of the major wholesaling companies, although in various instances Macdonalds Consolidated Limited either withdrew from prior pool arrangements or refused altogether to participate. To the extent that Consolidated Fruit Company and the Western Grocers-Dominion Fruit group agreed in every market, and Macdonalds in other instances, it can be said that agreements to purchase fruit and vegetable supplies in common by way of pool cars are evident from the oral and documentary evidence. But, while pooling agreements were entered into by these and other wholesale companies there was no evidence obtained which indicated that as such they prevented or reduced competition in the purchase, sale, or supply of fruits and vegetables. For Okanagan products, pooling arrangements were adopted only to a very limited extent.

In the matter of common price arrangements among jobbers it was clear on the one hand that discussions were frequent, and that some common understandings had been reached, among branch managers of wholesale houses in certain centres. On the other hand, the extent and effectiveness of such understandings were greatly limited by the nature of the fruit and vegetable distributing business and by the wide discretion allowed to individual branch managers to alter prices as occasion demanded. Discussions of selling prices amongst jobbers appear to have resulted at most in "marks to shoot at" and not in price agreements to which participants gave real support. The vigorously independent position of Macdonalds Consolidated Limited also made impossible any general agreement to fix common wholesale prices of fruits or vegetables. Specific instructions from the Company's head office required Macdonalds Consolidated managers to refrain from agreeing with competing branch houses on the fixing of common wholesale prices, and in general those instructions were followed. After an endeavour to give due weight to these considerations, the present conclusion is that no breach of the Combines Investigation Act in the matter of price agreements can be said to have taken place.

The evidence secured indicated that on several occasions certain independent jobbers have faced difficulties in participating in pool supplies. It did not show that any of these several isolated instances were the result of agreement or collusion on the part of any two or more of the large wholesale companies; and their results, in substance, do not appear to indicate contraventions of the Combines Investigation Act. Similarly, no combination of major wholesalers was found to have occurred for the purpose of making any special trade deals with British Columbia fruit and vegetable shippers. Nor was any evidence secured showing that wholesalers had taken any joint action to reduce unduly the volume of their purchases of British Columbia fruits or vegetables with a view to depressing prices to the growers or to increasing prices to retailers or consumers.

It is my opinion that a combine among Western Grocers Limited, its subsidiary Dominion Fruit Limited, and Consolidated Fruit Company Limited and Macdonalds Consolidated Limited, has not been found to exist.

2. The Alleged Combine of Jobbers and Shippers

The alleged combine of jobbers and shippers has been discussed in detail in chapter III of this report.

The investment by Dominion Fruit Limited in the British Columbia shipping and holding company, Lander Company Limited, amounts to a "merger" because this purchase has led to a control over or interest in the Lander Company Limited by Dominion Fruit Limited. With respect to the question of whether this merger operated or was likely to operate to the detriment or against the interest of the public, a clear instance of public detriment associated with this investment is the extent to which it was made in the face of statutory and common law rules of the duties of agents towards their principals. By investing in Lander Company Limited, Dominion Fruit Limited and Lander Company Limited together set up a conflict of interest and duty tending to induce those shipping organizations controlled by Lander Company Limited—the Sales Service group—to refrain from due performance of their duties as agents of fruit and vegetable producers. A corresponding though more widespread condition appeared in the 1925 investigation under the Combines Investigation Act into the Nash fruit combine. In the course of the trial which followed that inquiry Mr. Justice McDonald pointed out in his charge to the jury that an agent

> ". . . is not permitted to enter as such agent into any transaction in which he has a personal interest in conflict with his duty to his principal, unless the principal with a full knowledge of all the material circumstances and of the exact nature and extent of the agent's interest, consents; if he knows what he is doing he has no complaint. . . . It is not sufficient to merely disclose he has an interest or to make such a statement as will put the principal on enquiry, the burden of proving full disclosure lies on the agent."[1]

Since the completion of the Okanagan Valley hearings of this investigation, a purported reorganization of Sales Service Limited and its member shipping organizations has taken place. While details of these latest steps have not been submitted or secured, it may be noted that one of the effects of this inquiry appears to have been to influence Sales Service Limited and its officers to re-examine the basis of their relations with the growers. Any such reorganization in no degree affects the responsibility of Lander Company Limited and Sales Service Limited, with its officers, for the part these corporations and persons have played in the arrangements for the investment in Lander Company Limited by Dominion Fruit Limited.

While no evidence was found to show that Sales Service Limited sold any of its growers' products at prices less than the prevailing f.o.b. Okanagan Valley

[1] *The King* v. *Simington et al.*. (1926) 45 Canadian Criminal Cases 249, at 250, 251.

prices, the company was placed in a position where it could not demand from Western Grocers Limited and Dominion Fruit Limited the full prevailing price on every occasion. The same disadvantageous position applied to floor stock and condition and policy claims, and to quantity discounts. Despite the vital interest of the grower in all these points he was in many cases kept in ignorance as to what was occurring between his shipper, his broker and the jobbers. Nor did he benefit by these arrangements. Except for the undemonstrated possibility of a more or less continuous outlet for fruits and vegetables, there was no advantage to growers, and there were very decided disadvantages.

Not only did this investment have serious implications for the grower, but also it is an example to other jobbers. If the Lander company investment proved useful to Western Grocers Limited, similar attempts would be made by other major prairie jobbers, with the prospect of the whole marketing system being again dominated by jobbing interests. The experience of Okanagan growers with this type of jobber control, as exemplified by the Crestland Fruit Company Limited, was thoroughly unsatisfactory. Grower returns are said to have frequently compared unfavourably with those of other shipping houses, and in general there was a lack of faith in the motives of the Crestland company. The language employed by Mr. Justice McDonald in *The King* v. *Simington* with regard to brokers[2] must also apply to shippers. For as long as the consignment method in the case of independent shippers remains the accepted business procedure for the packing and shipping of Okanagan fruits and vegetables, then to that extent a shipper as a consignee should have no obligations, either corporate or otherwise, which will in any way compromise his loyalty and good faith to his grower-principal.

Linked with the problem of jobber-owned shipping houses is the question of direct cash buying in the Okanagan Valley by prairie jobbers. The unfortunate experience of Consolidated Fruit Company Limited between 1932 and 1933, when their cash buyer was driven out of the Valley by indignant growers, demonstrates how deeply the producers feel about such jobber purchasing methods. The "firm" sale had not been used in the Okanagan since 1922. Wide and rapid price variations made it undesirable for the grower to sell outright, for he might not obtain the season's maximum price. It seems impossible that the old cash buying method could be introduced again in the Valley unless the practice was improved. But secret or direct jobber purchases of interests in Okanagan shipping concerns may be even more unsatisfactory to the grower.

The investment in the Lander company, the special quantity discounts, and the interest of Western Grocers in the brokerage profits of the C. H. Robinson Company have been outlined in considerable detail. By investing in the Lander company, Western Grocers Limited obtained substantial control over the second largest group of Okanagan Valley shippers, which in turn affected the agency duties of Sales Service Limited. Having acquired an interest in the operations of a grower agent or sub-agent, the company, as a fruit jobber, thus automatically tended to compromise the good faith and loyalty of the agent to his producer-principal; and the agent, in entering into these relations, was thereby altering the fundamental character of his position as the producer's trusted representative. The non-disclosure by the agent to his principals of the obligations assumed in relation to the fruit jobber was a part of the breach of the agent's duty.

The investment in Lander Company facilitated and encouraged secret "deals" between Sales Service Limited and the Western Grocers organization, arrangements of which the grower-principals should not have been kept ignorance. The wide use of secret quantity discounts and other rebate methods

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[2] (1926) 45 C.C.C. 249, at 252: "Now, here is a broker. It is the duty of a broker to inform his principal of the actual terms of any contract made on his behalf; to make a careful estimate of the value of the goods which he is instructed to sell so that he may not sell them for less than their value, to exercise his skill and fairly communicate his opinion to his principal; and not to sell his own property to his principal, nor buy the principal's property, without full and fair disclosure."

by Sales Service Limited forced smaller independent shippers to compete with this unfair practice and to engage in more extreme forms of the same methods. Aside from the origin of the practice, Sales Service led the way from 1934, and particularly from 1936. The intensification of these methods has proven a detriment to the growers in that it has emphasized the unequal bargaining position of producers in British Columbia in relation to jobbers on the prairies. At the same time these practices have reduced the net returns payable to the producers for their consigned products.

The arrangements made by the Western Grocers organization with C. H. Robinson Company Limited in May of 1936 for participation in the net profits of the C. H. Robinson brokerage agency was made at a time when the Western Grocers organization and Sales Service agreed on the payment and receipt of quantity discounts, and shortly before the investment in the Lander company. Western Grocers, through Dominion Fruit was thus receiving payments from a broker and a shipper allegedly to provide a goodwill outlet for the very same supplies sold by such broker and shipper. These payments were little less than an outright gift, and appear to have been the result of the ability of Western Grocers Limited to threaten a course of buying action which might deprive the broker of a great share of his income.

In general there are no public benefits to be obtained from a series of jobber investments in British Columbia fruit and vegetable shipping organizations. The fundamental differences between shipper and jobber interests and general experience in such matters has suggested sharply that such a system would be most undesirable as a measure to aid the British Columbia producer in the marketing of his products in Western Canada.

It is in the public interest generally that no single private enterprise shall obtain too great a control over the sources of necessary products or over the facilities for their distribution. Through controlling the largest single block of wholesale houses and connections with a very substantial number of retail outlets, and now by the investment in a company supervising and in part controlling the shipment of almost twenty per cent of the Okanagan Valley's supplies, Western Grocers Limited has achieved a primary position in the distribution of British Columbia fruits and vegetables in Western Canada. The presence of two large competitors and other smaller wholesalers limits, however, the extent to which it can maintain any complete control over supplies and prices.

The secrecy surrounding various deals between 1936 and 1938, the non-disclosure of important information by Sales Service Limited to its principals, and the general atmosphere of domination by Western Grocers Limited over this grower selling agency, are together illustrations of conduct, furthered and intensified by the investment, which cannot be regarded as in the public interest. In British Columbia legislation has stated that, as a matter of public policy, jobbers should not invest in fruit shipping concerns. To that further extent the investment in the Lander Company may be regarded as a detriment to the entire public of the province.

In my opinion the following companies have been parties to the formation and operation of a combine within the meaning of section 2 of the Combines Investigation Act:

Dominion Fruit Limited, Winnipeg, Manitoba,

Western Grocers Limited, Winnipeg, Manitoba,

Lander Company Limited, Vernon, British Columbia,

Sales Service Limited, Kelowna, British Columbia.

Yours faithfully,

F. A. McGREGOR
Commissioner, Combines Investigation Act.

APPENDIX I

CUSTOMS DUTIES ON APPLES, CANADA, 1867-1939*

As early as December 13, 1867, green fruits entered Canada free when they were grown or produced in any of the provinces of British North America. There was 15 per cent duty in the case of imported apples from other sources. This was reduced to 10 per cent on April 8, 1870. Green apples were specifically mentioned on March 15, 1879, when a duty of 40 cents per barrel was levied. On April 13, 1888, imports of green apples in their natural condition were admitted free of duty by Order-in-Council. This was cancelled on March 28, 1890, when the rate of 40 cents per barrel was restored. Customs duties applicable to apples since 1906 have been as follows:—

Date	British Preferential Tariff	Immediate Tariff	General Tariff
	cents	cents	cents
November 30, 1906....(per barrel)	25	35	40
February 16, 1916.....(per barrel)	60	90	90
*May 2, 1930...........(ad valorem)	Free	15%	20%

* Apples, fresh, in their natural state, the weight of the package to be included in the weight for duty. Provided that when imported under the General Tariff rate the duty shall not be less than three-fourths of a cent per pound.

Dumping Duties.—The theory underlying the application of dumping duties is that imports to this country should not be permitted to enter at a valuation less than the "fair market value for home consumption in the place of origin," but where this amount is less than the Canadian price, then at such valuation as may be determined by the Minister of National Revenue and those charged with the enforcement of the Customs Act and the Customs Tariff Act.

The Customs Act of 1906, provided for the appraisal of imported commodities at a price not less than the fair market value of the given commodity for home consumption at its point of origin. By 1922 it was evident that a large apple surplus in the United States was depressing the domestic price in the apple growing districts. It was possible, therefore, to import apples into Canada from certain United States districts where the price had been severely depressed at a fair market valuation much less than the prevailing Canadian domestic price. As a result it was decided to institute a method of fixed valuations which would offset the depressed price at the imported product's point of origin. In 1922 legislation was enacted to authorize the Minister of National Revenue to set such fixed valuations by way of Order-in-Council. No such Order-in-Council was passed until 1926, when, pursuant to section 47(*a*) of the Customs Act, such an Order finally gave the Minister of National Revenue specific power to fix certain valuations.

The valuations so fixed pursuant to the Order-in-Council were applied to all of Canada, affecting areas supplied by British Columbia as well as those supplied by Ontario and the Annapolis Valley. In 1927 a per box value on apples of 75 cents was established. If an invoice covering imported apples declared a price less than 75 cents per box, the difference between 75 cents and the invoice price was a dumping duty. Up to September, 1930, however, the Minister had power to collect only a maximum of 15 per cent of the fixed value. The 75 cents per box fixed valuation was cancelled and in March of 1928 the Order-in-Council authorizing the Minister to fix valuations was abrogated.

The budget in May of 1930 introduced minimum specific duties for apples, and on August 20, 1930, a new Order-in-Council was passed pursuant to section 43 of the Customs Act, authorizing the Minister to set fixed valuations on apple imports. At this time the value so fixed as applied to apples was 6 cents per pound. In September, 1930, the dumping duty section of the Customs Act was amended to authorize *collection* by the Minister of National Revenue of dump duties under section 43. Theretofore, there had been some

* Based on information supplied by the Department of National Revenue.

doubt as to the actual authority to *collect* dumping duties as distinguished from the power to establish fixed valuations. Moreover, the problem of collection had changed due to the substitution in the May, 1930, budget of an ad valorem rate on apples for the old specific tax. With a 20 per cent ad valorem duty under the general tariff of 1930, and with a minimum fixed valuation of 6 cents per pound, the duty on an imported box of apples was at least 60 cents per box. In 1930 also a change was made to permit the Minister to collect dumping duty up to 50 per cent of the fixed value, as distinguished from 15 per cent to which collection had been limited heretofore. In September of the same year the fixed valuation on apples was reduced to 3 cents a pound. This value remained in effect until May 20, 1931, when it was removed, and again applied in July 10, 1931, when it remained in effect until June 1, 1932.

In 1932 the system was changed. It was considered that the dumping duty was being evaded through buyers arranging to have the invoiced selling price to be the price of the minimum fixed valuation. To meet this a new method was instituted by which the fixed value was set at an advance on the invoice value, in the case of apples at 1 cent per pound. It was impossible for American vendors to place the invoice price too low because it had to be at least the fair market value for home consumption at the point of shipment. This valuation of one cent in advance of invoice value remained in effect from July 25, 1932, to May 31, 1933. It was renewed on June 1, 1933, and continued through the crop season 1933-34. In 1934 a zoning system was begun which divided Canada into zones for the purpose of applying dump duties. The zoning system, however, did not apply to apples until 1937. In the crop season 1934-35 the one cent a pound in advance of invoice value was continued in effect.

The Canadian-United States Trade Treaty came into effect January 1, 1936, and one of its provisions was that the valuation in advance of invoice value was not to exceed 80 per cent of the former fixed advance, which in the case of apples would limit the fixed advance to four-fifths of a cent. This fixed valuation of 4/5 cent applied until April 26, 1937. In 1937 apples were brought under the zoning system. Three zones were established—Manitoba and the other Western provinces as a Western zone; Ontario and Quebec as the Central zone, and New Brunswick, Nova Scotia, and Prince Edward Island as the Maritime zone. The January 1, 1936, 4/5 cent rate again applied on July 30, 1937, and remained in effect until April 9, 1938. On July 8, 1938, the same fixed valuation again was applied to American apples, and continued until June 30, 1939. These dates relate only to the application of the dumping duty clauses to the Western Canadian zone, and different dates were effective in the Central zone and the Maritime zone, although the same rate on apples prevailed in all three zones.

It should be observed that the 1930 budget provided that apples imported under the general tariff were to be subject to a duty of not less than three-fifths of a cent per pound. The 1936 United States-Canada Trade Treaty brought American imports under the intermediate tariff and this minimum, therefore, did not apply. The new United States-Canada Trade Agreement specifies that the maximum fixed valuation for purposes of dumping duty shall not be more than four-fifths of a cent per pound in excess of invoice value.

APPENDIX II

ACREAGE, APPLES AND OTHER TREE FRUITS, OKANAGAN VALLEY, 1925 and 1935*

Fruit	1925	1935	Increase	Decrease
	acres	acres	acres	acres
Apples	18,138	18,442	304	–
Pears	1,004	1,521	517	–
Cherries	600	767	167	–
Prunes	334	569	235	–
Plums	209	164	–	45
Peaches	524	1,323	799	–
Apricots	511	566	55	–
Crabapples	686	401	–	285
Total	22,006	23,753	2,077	330

* Compiled from statistics furnished by District Horticulturist, Vernon, B.C. (Exhibit 133).

APPENDIX III

AVERAGE ACREAGE PER FRUIT GROWER, PER SECTION, IN OKANAGAN VALLEY 1935 *

District	Total		Average Ac. per Grower	No. of Growers with over 50 Ac.	Average after segregating larger Acreages	
	Acreage	Growers			Average Ac. all Growers over 50 Ac.	Average Ac. all Growers under 50 Ac.
Kamloops-Main Line	602·9	34	17·7	2	128·0	10·8
Salmon Arm-Sorrento	1635·7	240	6·8	1	55·0	6·4
Armstrong-Enderby	271·3	79	3·4	0	–	3·4
Vernon	3312·0	215	15·4	11	130·7	9·2
Oyama	913·3	79	11·5	1	60·0	10·9
Ok. Centre-Winfield	1297·8	90	14·4	2	190·0	10·4
Kelowna	5676·3	421	13·5	11	80·2	11·7
Westbank	576·6	69	8·4	0	–	8·4
Peachland	434·4	84	5·2	1	79·0	4·3
Summerland	2549·8	364	7·0	2	103·5	6·5
Naramata	876·5	95	9·2	–	–	9·2
Penticton	2096·0	245	8·6	1	90·0	8·2
Kaleden	462·7	48	9·7	–	–	9·7
Oliver-Osoyoos	2355·2	251	9·3	1	104·0	9·0
Keremeos-Cawston	691·7	115	6·0	1	54·0	5·6
Totals and Averages	23752·2	2429	9·8	34	97·7	8·2

* Statistics furnished by District Horticulturist, Vernon, B. C. (Exhibit 133).

APPENDIX IV

AVERAGE APPLE YIELDS PER TREE AND PER ACRE, BY SECTIONS, OKANAGAN VALLEY DISTRICT, 1925, 1930, 1935 *

Section	1925		1930		1935	
	Per Tree	Per Acre	Per Tree	Per Acre	Per Tree	Per Acre
Kamloops-Main Line	1·4	98	3·9	234	3·4	204
Salmon Arm-Sorrento	1·7	119	3·0	180	2·6	156
Armstrong-Enderby	1·0	70	2·1	126	1·2	72
Vernon	3·4	238	4·8	288	6·0	360
Oyama	3·4	238	4·0	240	5·5	330
Okanagan Centre-Winfield	3·0	210	4·3	258	5·0	300
Kelowna	4·1	287	4·0	240	5·6	336
Westbank	3·4	238	5·0	300	6·8	408
Peachland	2·7	189	4·6	276	3·9	234
Summerland	3·4	238	4·0	240	5·6	336
Naramata	3·2	224	4·0	240	4·8	288
Penticton	5·2	364	6·2	372	7·7	462
Kaleden	3·8	266	8·0	480	7·9	474
Oliver-Osoyoos	–	–	4·0	240	5·0	300
Keremeos-Cawston	3·1	217	4·0	240	4·2	252
North Okanagan	3·2	224	4·5	270	5·0	300
South Okanagan	3·9	273	4·8	288	5·9	354
Total Okanagan	3·4	238	4·6	276	5·3	318

North Okanagan—Kelowna and North. South Okanagan—Westbank and South.

* Statistics furnished by District Horticulturist, Vernon, B. C. (Exhibit 133).

APPENDIX V

AVERAGE RETAIL COST OF GROWERS' SUPPLIES, OKANAGAN VALLEY, 1925-1938

——		1925	1930	1935	1938
		$ cts.	$ cts.	$ cts.	$ cts.
Spray Materials—†					
Arsenate of Lead	per lb.	0 25	0 17	0 12½	0 13½
Nicotine Sulphate 40%	" 10 lb.	13 00	13 25	9 00	8 50
Lime Sulphur	" gal.	0 26½	0 27	0 27	0 26½
Oil Emulsion	" gal.	0 42½	0 35	0 337	0 337
Casein Spreader	" lb.	0 20	0 12½	0 12½	0 12½
Fertilizers—					
Sulphate of Ammonia	per 100 lb.	....	3 60	1 60	2 10
Superphosphate of Lime	" "	....	1 20	1 00	1 50
Muriate of Potash	" "	....	2 75	2 75	2 75
Complete 6–10–10	" "	....	2 85	2 00	2 20
" 3–10–8	" "	....	2 60	1 75	2 00
Box Materials—					
Apple boxes made up‡	" box	0 20	0 17½	0 13¼	0 16½
Standard stone-fruit box	(Peach crate)	0 08½	0 08	0 07½	0 10½
Standard prune box	"	0 09	0 08	0 08	0 10½
4-basket crate complete		....	....	....	0 17½

* Information supplied by District Horticulturist, Vernon, B.C. (Exhibit 133).

† The cost of spray machines has not varied in any appreciable degree over the ten-year period, but the efficiency of the machine has greatly improved so that we can say that the growers are getting more efficiency for their outlay than previously.

‡Pear and crabapple boxes 2 cents less than the standard apple box over all periods.

APPENDIX VI

PRODUCTION COSTS OF TWO ORCHARDS, KELOWNA, B.C.*

1. Crop Returns—Orchard "A", 1928–1937

14·5 Acres Apples—1 Acre Cherries

Year	Loose boxes	Packed boxes	Total Cost of Production †	Total Returns	Cost per packed box (Apples only)	Returns per packed box (Apples only)
			$	$	cents	cents
1928	8,122	5,376	2,203 65	3,450 00	38·8	60·7
1929	4,471	3,174	1,735 00	2,836 90	54·4	89·4
1930	10,388	7,551	2,656 70	3,217 20	34·8	42·6
1931	4,746	3,366	1,701 55	1,775 00	49·3	34·9
1932	9,260	6,307	2,081 80	1,530 83	32·3	24·0
1933	8,770	5,741	1,594 93	2,488 16	26·5	41·2
1934	8,773	5,982	1,930 91	2,664 46	30·7	40·0
1935	10,965	7,312	2,154 12	3,243 86	29·4	43·0
1936	4,538	2,989	1,451 53	1,381 44	49·5	46·2
1937	13,134	8,984	2,898 22	3,695 15	29·0	40·5

2. Production Costs†

—	Orchard "A" 6 year Average, 1930–1935	Orchard "B" 36 Acres Apples—4 Acres Cherries Year 1937 (Average Year)			
	Apples per packed box	Apples		Cherries	
		Per acre	Per packed box	Per acre	Per packed box
	cents	$ cts.	cents	$ cts.	cents
Pruning	3·7	15 26	4·6	1 95	0·5
Cultivation	2·5	5 78	1·7	5 78	1·6
Irrigation—Labour	2·2				
Taxes	1·4	14 18	4·3	14 18	4·0
Tolls	2·5				
Fertilizer	....	10 94	3·3	....	....
Spraying	3·2	31 54	9·7	....	....
Thinning	4·8	3 97	1·2	....	....
Propping	....	3 40	1·0	....	....
Picking and hauling	9·7	40 36	12·4	98 45	27·7
Water charges	....	14 79	5·4	14 79	4·9
Flume repairs	0·2	....	....	....	....
New trees	0·1	....	....	....	....
Provincial taxes	0·7	2 70	0·8	2 70	0·7
Sundry	2·1	17 59	4·5	17 59	4·1
Total	33·1	160 51	48·9	155 44	43·5

* Records supplied by two growers operating orchards in the Kelowna district.

† Actual out-of-pocket costs to grower—No provision made for grower's own labour, depreciation or interest on investment.

APPENDIX VII

AVERAGE PRODUCTION OF APPLES, BY VARIETIES, 1932–1935; WITH RELATIVE PRODUCTION OF APPLE VARIETIES, 1925, 1935, AND ESTIMATE OF 1945; OKANAGAN VALLEY *

Variety	Average Box Production, 4 years 1932–1935	Percentage of Total Production		
		1925	1935	1945†
Wealthy and Duchess	352,753	9·9	7·5	5·8
McIntosh	1,511,571	27·0	32·4	29·2
Jonathan	712,187	20·0	15·3	11·9
Delicious	501,633	5·0	10·8	14·7
Yellow Newton	313,641	6·3	6·8	8·8
Old Winesap	137,748	2·5	2·9	4·4
Stayman Winesap	54,003	1·0	1·2	2·2
Rome Beauty	210,036	2·7	4·3	4·6
Others	642,026	23·0	13·8	12·1
Manufactured	224,480	3·2	4·8	6·3
Totals	4,660,081	100·0	100·0	100·0

* Statistics furnished by District Horticulturist, Vernon, B.C. (Exhibit 133).
† Calculated on arbitrary basis of all trees now planted coming into bearing.

APPENDIX VIII

DESCRIPTION OF TYPES OF PACKS FOR OKANAGAN VALLEY APPLES, 1938-1939 CROP SEASON *

—	McIntosh Red	Delicious	Wealthy
	Colour	Colour	Colour
Grades Packed and Colour Requirements	Extra Fancy........40% Fancy..............15% Cee Grade..........15% C showing Cee Face... 15% " and Jumble Fancy Tiered...15% " Cee Grade " 15% " Loose for cannery Nil.	Extra Fancy........50% Fancy..............25% Cee Grade..........15% showing Tiered Pack Grades as above.	Fancy..............15% Cee Grade. Cee. Face and Jumble.
SIZE GROUPS—			
Large	113 and larger	88 and larger	113 and larger.
Medium	125 to 138	96 to 138	125 to 128.
Small Export	150 to 216	150 to 216	150 to 216.
Small	234 to 270	234	234 to 252.
LOOSE FOR CANNERY	Cee Grade 113 and larger		
TIERED—			
Extra fancy	100 and larger	64 and larger	
UNWRAPPED—			
Fancy	100 and larger	64 and larger	
Cee Grade	113 and larger	88 and larger	
FACE AND JUMBLE—	Cee Grade............. 113 and larger when ordered.		2½" and larger when ordered.
APPLE WRAPS—			
Dry Print	All wrapped stock	Extra Fancy.....150-234 Fancy...........150-234	All wrapped stock.
Oil Print		Extra Fancy..... 72-138 Fancy........... 72-138 Cee Grade.......100-180	
PROTECTION—			
Excelsior Pads	Top all grades and sizes.	Top all wrapped stock.	Top all grades and sizes.
Corrugated Board	Bottom all grades and sizes.	Bottom all tiered stock.	Bottom all grades and sizes.
SPECIAL PROTECTION	Corrugated Board Bottom and sides on all grades—Sizes 138-252		Fancy 138-252 Corrugated Board Bottom and sides.
INTERLEAVING	Extra Fancy....150-175 Fancy...........150-175		
APPLE BOX CREPE LINERS	All wrapped stock	All wrapped stock	All wrapped stock.
AVERAGE WEIGHTS:	Gross Tare Net	Gross Tare Net	
113 and larger	49 7½ 41½	52¼ 7½ 44¾	
125 to 163	49 7½ 41½	53 7½ 45½	
175 and smaller	50 7½ 42½	53 7½ 45½	
Face and Jumble	48½ 7½ 41		
Tiered Pack	48¾ 7½ 41¼		

Inside Measurements of Standard Apple Box

Depth—10½ inches
Width—11½ inches
Length—18 inches

Complete List of Apple Sizes—Standard Pack Approximate Number of Apples per Box

46	80	113	163	198	270
56	88	125	175	216	288
64	96	138	180	234	306
72	100	150	188	252	

* Furnished by Kelowna Growers Exchange, Kelowna, B.C.

APPENDIX IX

CAPITAL EMPLOYED AND NET PROFITS EARNED BY TEN OKANAGAN VALLEY SHIPPING COMPANIES, FISCAL YEARS ENDING IN 1936, 1937 AND 1938

Company:	A	B	C	D	E	F	G	H*	I	J
Fiscal year ends:	March 31	April 30	May 31	May 31	March 31	March 31	March 31	March 31	May 31	April 30
YEAR ENDING IN 1936	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
Capital—										
Paid up	20,000 00	24,816 00	......	10,548 00	18,372 00	......	11,400 00	12,165 00	21,250 00	23,098 57
Surplus	24,236 16	11,413 71	......	5,161 96	24,741 72	......	2,000 00	82 81	6,987 37	4,386 94
Total	44,236 16	36,229 71	......	15,709 96	43,113 72	......	13,400 00	12,247 81	28,237 37	27,485 51
Net Profits—										
Amount	9,582 27	5,049 80	......	9,550 48	4,995 47	......	6,977 88	24 21	2,695 97	(loss) 436 29
As % of capital employed	21·66	13·94	......	60·79	11·59	......	52·07	0·00	9·55	(loss) 1·58
YEAR ENDING IN 1937										
Capital—										
Paid up	20,000 00	24,816 00	7,000 00	10,548 00	18,372 00	......	11,400 00	12,165 00	21,250 00	22,700 00
Surplus	24,410 58	14,902 54	......	9,655 07	26,863 04	......	6,679 04	107 02	8,247 20	3,339 89
Total	44,410 58	39,718 54	7,000 00	20,203 07	45,235 04	......	18,079 04	12,272 02	29,497 20	26,039 89
Net Profits—										
Amount	10,163 56	4,706 08	2,765 00	11,408 40	8,027 09	......	7,213 26	21 80	3,506 43	(loss) 2,263 47
As % of capital employed	22·88	11·85	39·5	56·47	17·74	......	39·9	0·0	11·85	(loss) 8·65
YEAR ENDING IN 1938										
Capital—										
Paid up	20,000 00	24,816 00	7,000 00	10,548 00	......	16,000 00	11,400 00	12,165 00	21,250 00	22,700 00
Surplus	30,093 59	17,310 06	1,922 60	14,391 67	......	......	9,212 56	128 82	9,553 63	804 52
Total	50,093 59	42,126 06	8,922 60	24,939 67	......	16,000 00	20,612 56	12,293 82	30,803 63	23,504 52
Net Profits—										
Amount	9,413 64	7,908 58	3,407 20	9,063 41	......	7,225 93	9,184 88	16 57	5,433 88	41 92
As % of capital employed	18·80	19·72	38·18	36·34	......	45·16	44·56	0·0	17·64	0·18
Net profits as % of average capital employed for above periods	21·02	14·96	38·76	49·32	14·75	45·16	44·87	0·0	13·14	(loss) 3·45

* No depreciation or salaries charged during 3-year period.

NOTE.—Capital, including accumulated surplus, is capital at commencement of year, and Net Profits are profits after provision for depreciation and all fixed charges and before Income Tax; with exception of Company "H" as noted.

APPENDIX X

LIST OF FRUIT AND VEGETABLE WHOLESALERS OPERATING IN MANITOBA, SASKATCHEWAN AND ALBERTA, JANUARY, 1939

MANITOBA

Major

Brandon—
Macdonalds Consolidated Limited
Pioneer Fruit, Brandon (W.G.-D.F.)
Western Grocers Limited
The Scott Fruit Company (C.F.)

Dauphin—
Western Grocers Limited

The Pas—
National Fruit Company (C.F.)
Western Grocers Limited

Flin Flon—
Western Grocers Limited †

Winnipeg—
Western Grocers Limited
Rogers Fruit (W.G.-D.F.)
Sterling Fruit (W.G.-D.F.)
Bright Emery (W.G.-D.F.)
The Scott Fruit Company (C.F.)
Macdonalds Consolidated Limited
Continental Fruit Company (M.C.)

*Independent **

Winnipeg—
Cran, Mowat & Drever Limited
Crescent Fruit Company
Merchants Consolidated Limited
Rusen, Solomon & Company
United Fruit Company

SASKATCHEWAN

Major

Kerrobert—
Macdonalds Consolidated Limited

Lloydminster—
Dominion Fruit Limited

Melfort—
Macdonalds Consolidated Limited

Moose Jaw—
Macdonalds Consolidated Limited
National Fruit Company (C.F.)
Rex Fruit Wholesale (W.G.-D.F.)
Western Grocers Limited

North Battleford—
Macdonalds Consolidated Limited
Dominion Fruit Limited
Western Grocers Limited

Prince Albert—
Macdonalds Consolidated Limited
National Fruit Company (C.F.)
Western Grocers Limited

Regina—
Macdonalds Consolidated Limited
National Fruit Company (C.F.)
S. & M. Wholesale Fruit (W.G.-D.F.)
The Scott Fruit Company (C.F.)
H. G. Smith Limited (M.C.)
Western Grocers Limited

Saskatoon—
Dominion Fruit Limited (W.G.-D.F.)
Western Grocers Limited
Macdonalds Consolidated Limited
The Scott Fruit Company (C.F.)
National Fruit Company (C.F.)

*Independent **

Melville—
H. Soifer

Regina—
McBrides Limited

Saskatoon—
Central Wholesale Grocery

LIST OF FRUIT AND VEGETABLE WHOLESALERS OPERATING IN MANITOBA, SASKATCHEWAN AND ALBERTA, JANUARY, 1939—*Concluded*

Major	*Independent* *
SASKATCHEWAN—*Concluded*	
Shaunavon—	
Macdonalds Consolidated Limited	
Swift Current—	*Swift Current—*
Dominion Fruit Limited	The W. W. Cooper Company Limited
Weyburn—	
Macdonalds Consolidated Limited	
Walker Fruit (W.G.-D.F.)	
Yorkton—	
Macdonalds Consilidated Limited	
The Scott Fruit Company (C.F.)	
Smith Fruit (W.G.-D.F.)	
Western Grocers Limited	
ALBERTA	
Blairmore—	
Plunkett & Savage (W.G.-D.F.) †	
Calgary—	*Calgary—*
Consolidated Fruit Company Limited (Head Office)	Associated Grocers Limited
Macdonalds Consolidated Limited	N. A. Barker Limited
National Fruit Company (C.F.)	Calgary Fruit Limited
Plunkett & Savage Company (W.G.-D.F.)	T. J. Styles & Company
The Scott Fruit Company (C.F.)	
Western Grocers Limited	
Camrose—	
Macdonalds Consolidated Limited	
Edmonton—	*Edmonton—*
Brown Fruit (W.G.-D.F.)	The Merco Wholesale Limited
H. H. Cooper Limited (W.G.-D.F.)	
Macdonalds Consolidated Limited	
National Fruit Company (C.F.)	
Royal Fruit Wholesale (W.G.-D.F.)	
The Scott Fruit Company (C.F.)	
Western Grocers Limited	
Grande Prairie—	
Royal Fruit Wholesale †	
National Fruit Company	
Lethbridge—	*Lethbridge—*
Macdonalds Consolidated Limited	Campbell, Wilson & Horne Limited
Plunkett & Savage (W.G.-D.F.)	
The Scott Fruit Company (C.F.)	
Western Grocers Limited	
Medicine Hat—	
Dominion Fruit Limited	
National Fruit Company (C.F.)	
Peace River—	
Royal Fruit Wholesale (W.G.-D.F.) †	
Red Deer—	
Plunkett & Savage (W.G.-D.F.) †	

* Independents are difficult to classify, since some deal in potatoes and other specialities only. The ones included here deal in fruits and vegetables.

† These are sub-agencies—fruit depots—not regular branch houses:

W.G.-D.F.—Western Grocers Limited—Dominion Fruit Limited.
C.F.—Consolidated Fruit Company Limited.
M.C.—Macdonalds Consolidated Limited.